the ADVOCATE
Volume 68 | No. 9
September 2025

LAWYERS' ROLES DURING THE JAPANESE AMERICAN INCARCERATION

PLUS

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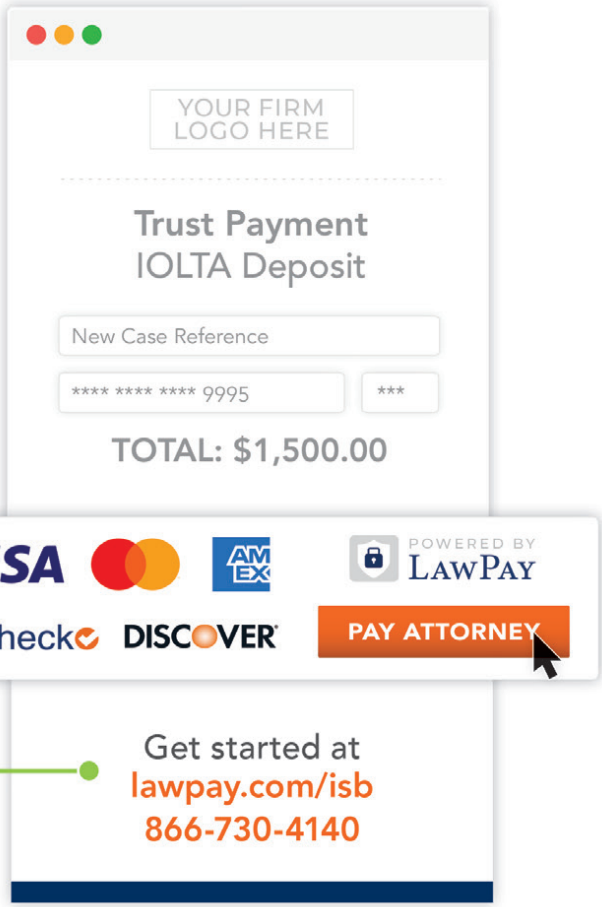

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the Advocate

September 2025

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On the Cover

The lawyers and client pictured here are in this issue's Featured Article by Lorraine Bannai. Gordon Hirabayashi with (counter-clockwise) Kathryn Bannai (lead counsel 1982-85), Rodney Kawakami (lead counsel 1985-87), Benson Wong, Arthur Barnett, and Michael Leong. Photo credit: ©Michael Yamashita.

Featured Article

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Additional Article

From the Bar

In Every Issue

KEVIN J. WAITE
(Public Reprimand)

On August 1, 2025, the Professional Conduct Board issued a Public Reprimand to Coeur d'Alene attorney Kevin J. Waite based on violations of I.R.P.C. 1.2(a) [Failing to abide by a client's decisions concerning the objectives of the representation], I.R.P.C. 1.3 [Failing to act with reasonable diligence and promptness in representing a client], I.R.P.C. 1.4 [Failing to keep a client reasonably informed about the status of a matter], and I.R.P.C. 8.4(d) [Engaging in conduct prejudicial to the administration of justice]. The Professional Conduct Board's Disciplinary Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding in which Mr. Waite admitted that he violated those Rules.

The formal charge case related to the following circumstances. Mr. Waite represented D.T. in a divorce case. In September 2017, after trial, the court granted judgment in favor of D.T. and directed Mr. Waite to submit a proposed Judgment and Decree of Divorce ("proposed Judgment") with the parties' signatures. Mr. Waite promptly prepared and sent the proposed Judgment to D.T. for her signature. D.T. returned the signed proposed Judgment to Mr. Waite in January. However, Mr. Waite regarded D.T.'s signature as inadequate and did not submit the proposed Judgment until October 2018, after the court clerk issued a Notice of Proposed Dismissal for Inactivity. The court clerk rejected the proposed Judgment because Mr. Waite failed to include an email address and mail service fee. Mr. Waite did not see the clerk's notification email regarding that rejection and as a result did not inform D.T. or submit a corrected proposed Judgment. In March 2019, the court dismissed D.T.'s divorce case due to inactivity. Mr. Waite did not see the dismissal order and as a result did not inform D.T. that her divorce case was dismissed.

Approximately six years later, in July 2024, after remarrying and starting a new family, D.T. attempted to file a modification petition against her former husband and learned that she was still married to him because her divorce case was dismissed in March 2019. D.T. contacted Mr. Waite for advice and requested a copy of her case file. Mr. Waite spoke with D.T. twice but did not respond to all of her inquiries and did not provide her case file. In June 2025, Mr. Waite provided a full $5,000 refund to D.T.

The Public Reprimand does not limit Mr. Waite's eligibility to practice law. Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

JACK N. WAGNER
(Resignation in Lieu of Disciplinary Proceedings)

On August 8, 2025, the Idaho Supreme Court entered an Order accepting the resignation in lieu of disciplinary proceedings of Boise attorney Jack N. Wagner. The Idaho Supreme Court's Order followed a stipulated resolution of a disciplinary proceeding that related to the following conduct.

Mr. Wagner, a family law attorney, was admitted to practice law in Idaho in October 2020. For the course of his time practicing law, Mr. Wagner has admitted to alcohol abuse, resulting in inappropriate conduct. In May 2021, Mr. Wagner called and left a voicemail for "M.K.," the mother of his young child, "C.J.," threatening to physically harm M.K., her family, and her boyfriend. In February 2024, Mr. Wagner called and left two voicemails for M.K. in which he again threatened to physically harm M.K. and her family. Regarding his February 2024 voicemails, Mr. Wagner was charged with misdemeanor telephone harassment. Mr. Wagner entered an Alford plea to the harassment charge and was sentenced to a period of suspended jail time, community service, unsupervised probation, and anger management treatment.

In June 2024, Mr. Wagner sent multiple texts to M.K. again threatening physical harm to M.K. and her family and making false statements about discussions he had with C.J. Mr. Wagner, who at that time was employed as counsel with Idaho Legal Aid, also falsely informed M.K. that he had inappropriately removed materials from the Nampa Family Justice Center. M.K. sought and obtained a civil protection order ("CPO") against Mr. Wagner, who then filed multiple motions in the couple's pending custody case seeking custody of C.J., in part on the grounds that M.K. had allegedly sought a "frivolous" CPO against him based on "unfounded fabrications." The magistrate court issued the CPO and later that day, Mr. Wagner sent multiple emails to M.K.'s counsel in the custody case, "A.P.," offering to pay M.K. and A.P. in cash if M.K. stipulated to amend the CPO to allow him custody time with C.J. Neither M.K. nor A.P. accepted Mr. Wagner's cash payment offer.

In June 2025, Mr. Wagner sent numerous emails and texts to M.K. and her mother, "S.G." In his messages to S.G., Mr. Wagner threatened to "drag" S.G.'s entire family into the custody dispute unless she and M.K. complied with his requests. Mr. Wagner also offered to drop his pending contempt action against M.K. if S.G. issued a $10,000 check to Mr. Wagner for C.J.'s college fund. Based on Mr. Wagner's repeated unwelcome communications, S.G. blocked his texts. After realizing that S.G. had blocked his texts, Mr. Wagner sent a message to M.K. stating that he would "go speak with [S.G.] direct" if she did not unblock him. S.G. felt threatened by that statement and reported Mr. Wagner's conduct to law enforcement. In his communications with M.K., Mr. Wagner also referenced his pending disciplinary case and stated that he needed to do a "full court press to save [his] license." Mr. Wagner asked for M.K.'s help in that effort, despite the fact that M.K. was the grievant in the disciplinary case.

In July 2025, after learning that M.K. had sought another CPO against him, Mr. Wagner sent multiple unsolicited texts to M.K. disparaging her. After learning that S.G. had reported his conduct to law enforcement, Mr. Wagner sent multiple unsolicited emails to S.G. disparaging her and stating that she was no longer C.J.'s grandmother.

With respect to the conduct described above, Mr. Wagner admitted that he

violated IRPC 8.4(b) [Committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects], IRPC 8.4(c) [Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation], and IRPC 8.4(d) [Engaging in conduct prejudicial to the administration of justice].

The Idaho Supreme Court accepted Mr. Wagner's resignation in lieu of disciplinary proceedings. By the terms of the Order, Mr. Wagner may not make application for admission to the Idaho State Bar sooner than five (5) years from the date of his resignation. If Mr. Wagner does make such application for admission, he will be required to comply with all the bar admission requirements in Section II of the Idaho Bar Commission Rules and shall have the burden of overcoming the rebuttable presumption of the "unfitness to practice law."

By the terms of the Idaho Supreme Court's Order, Mr. Wagner's name was stricken from the records of the Idaho Supreme Court and his right to practice law before the courts in the State of Idaho was terminated on August 8, 2025.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

Summary of Amendments to Section III of the Idaho Bar Commission Rules

During the Resolution process last fall, Bar members approved a resolution to amend Idaho Code Section 3-409 and Idaho Bar Commission Rule ("I.B.C.R.") 304 to increase attorney license fees. Consistent with the results of the resolution process, the Bar pursued legislation to amend Idaho Code Section 3-409. On March 19, 2025, Governor Little signed Senate Bill 1030 into law. On May 14, 2025, the Idaho Supreme Court entered an Order amending I.B.C.R. 304 to increase the annual license fees paid by Idaho attorneys, consistent with the resolution approved by the membership and the amendments to Idaho Code Section 3-409, effective January 1, 2026. Attorneys will see a $10-$60 increase in their annual license fees depending on license type (e.g., Inactive, Active, etc.) commencing with 2026 annual licensing. Any questions about this can be directed to Executive Director, Maureen Ryan Braley at (208) 334-4500.

Idaho Supreme Court Orders Granting Petitions for Reinstatement to the Practice of Law

As of the date(s) indicated, the following attorneys' licenses were reinstated:

Samantha E. Wilcox; Active Status, July 21, 2025

Letter to the Editor

Dear Editor,

I read with interest Karl Brooks's June/July Letter to the Editor regarding Idaho attorneys' involvement, or lack thereof, in a troubling chapter of our state and national history. With this letter, I seek to add to the conversation.

Some Idaho attorneys did, in fact, raise constitutional challenges to the incarceration in Idaho of over 14,000 men, women and children of Japanese ancestry, most of whom were U.S. citizens, and did so in defense of 44 incarcerees who resisted the WWII draft. Their resistance was founded on a simple premise, "Why should I fight for a country that has stripped me and my family of their civil liberties and placed us behind barbed wire?"

Although Minidoka had the highest pro-rata percentage of men who volunteered to serve, these 44 young U.S. citizens showed a different type of courage—civil disobedience and a willingness to accept the consequences of that disobedience in the face of our government's oppression and unlawful treatment of U.S. citizens. As it turned out, the consequences were worse than had they not resisted. Most of the resisters served federal prison sentences on McNeil Island in the Puget Sound longer than the two-year conscription period and weren't paroled until after Minidoka was closed down.

Some Idaho attorneys and the judge involved in the trials of the Japanese American WWII draft resisters at times fell short of the highest standards of our profession. They were products of their time; a time when emotions ran high and the events at Pearl Harbor were fresh. Others, however, went above and beyond in their quest to defend these pioneers of Idaho civil disobedience against a judicial system that fell prey to war hysteria and racism. To the credit of our profession, constitutional due process and other legal arguments were in fact raised by some Idaho attorneys, though they fell upon deaf judicial ears.

The Japanese American draft resisters' legal saga is now being retold and illuminated by a group of attorneys and judges to remind us of those less than noble chapters in our history, so that we don't repeat them.

For more on how Idaho judges and attorneys comported themselves during this little remembered chapter of our profession's history, please take a look at Idaho Public Television's award-winning documentary "The Nisei Paradox: Justice on Trial" at https://www.idahoptv.org/shows/idahoexperience. There you can view the multi-media staged reading of The Nisei Paradox and retired Federal Magistrate Judge Ron Bush's excellent narration that further illuminates Idaho's judicial system and how it grappled, sometimes admirably, sometimes less so, with important constitutional and simple fairness issues at a time when our country was in actual crisis. Examination of this legal subchapter of the larger WWII story may serve as a clarion call (or at least a reminder) that we, as attorneys and judges, should seek to remember so that we don't repeat it, a message as relevant today as it was 80 plus years ago.

Jeff Thomson
Member of the Idaho State Bar

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Rooted in Tradition, Reaching for Tomorrow

Kristin Bjorkman

As I step into the role of president for the Board of Commissioners of the Idaho State Bar, I do so with deep humility and profound gratitude. This year marks an especially meaningful milestone for us—the 100-year anniversary of the Idaho State Bar. For a century, we have grown from humble beginnings into an enduring, respected community of professionals, shaped by tradition, sustained by fellowship, and driven by purpose. It is from this strong foundation that we now reach for tomorrow.

Our centennial celebration reminds us not only of our historical achievements but also of the enduring values that continue to define us. Among these, is the genuine closeness we share as members. Whether we're meeting for conferences, gathering for local district bar meetings, or collaborating on cases, there's a sense of unity and mutual respect. It's a culture where people care, contribute, and connect.

As our state continues to grow—and with it the membership of the Idaho State Bar—we must be intentional in preserving this sense of closeness. Growth brings opportunities, but it also poses challenges to our tight-knit culture. To meet this, we must actively foster environments where connection is cultivated, mentorship is encouraged, and traditions are passed on—not as relics, but as living practices that continue to shape and inspire.

Mentorship: Building Bridges to the Future

One of the most powerful tools we have for sustaining our culture is mentorship. Through mentoring, institutional knowledge is passed down, values are instilled, and professional development is personalized. Every one of us remembers someone who took the time to show us the ropes, answer our questions, and encourage our growth. Now, it's our turn to do the same.

Mentorship doesn't have to be formal. It can happen over coffee at a conference, during a committee meeting, or through a simple phone call to check in on a new attorney. Within your community, seasoned professionals could institute a monthly "Mentor Meetup" where newer members can bring real-world challenges to the table and receive feedback. A quarterly career development panel hosted by members of the bar to help early-career professionals gain clarity about advancement opportunities is another way to foster connection and provide guidance. These are just a few of the many ways we can give back by guiding others.

Volunteerism: Fueling Our Future

Equally essential to our future is volunteerism. Our organization has always depended on the generous contributions of time, talent, and heart from its members. Whether it's planning a conference, serving on a committee, or helping with programming for a district bar event, volunteers are the lifeblood of what we do.

But volunteerism does more than power our organization, it enriches the lives of those who step up. Personally, I can say that some of my most meaningful professional relationships and learning experiences have come through volunteer roles. When you get involved, you

don't just contribute to the mission—you grow, connect, and lead in new ways.

If you're unsure where to begin, start small. Sign up to help at an event. Join a short-term task force. Reach out to your local district bar leadership and ask where help is needed. The satisfaction that comes from making an impact is immediate. You might find yourself inspired to do even more.

Looking Ahead with Purpose

One of the most memorable highlights of this year was our 2025 Annual Meeting and Anniversary Gala, where we came together to celebrate the Centennial of the Idaho State Bar. It was an extraordinary event—part celebration, part reflection—as we looked back on the remarkable people and milestones that have shaped us over the past century.

A particularly moving moment was the unveiling of *Tents to Towers, The History of the Practice of Law in Idaho*, a book assembled by a dedicated group of members passionate about preserving our history. This publication beautifully chronicles the history of our bar and the professionals who have built and sustained our field, offering insight into their challenges, triumphs, and lasting legacies. It reminded us that our future is built on the dedication of those who came before us—and that we are responsible for carrying the torch forward.

As demonstrated by our history, being rooted in tradition doesn't mean staying still. It means knowing where we've come from and using that knowledge to build a better tomorrow. Our centennial year has been a celebration of the past, but it is also a launching pad for the future.

Together, we can shape what the next 100 years will look like. We can continue to grow while remaining connected. We can honor our history by actively mentoring and lifting up those who will carry the profession forward. We can ensure our organization not only survives but thrives, fueled by the dedication of volunteers, strengthened by collegial bonds, and inspired by a common purpose.

To every member who has contributed, mentored, or volunteered: thank you. To those just beginning their journey with us: welcome. There's a place for you here, and a future we can build—together.

Kristin Bjorkman *is the current President of the Idaho State Bar Board of Commissioners, representing the Fourth District. She is a second-generation Idaho lawyer with decades of experience negotiating and documenting real estate, commercial finance, and business transactions. Her interest in law was influenced by her father who paused his career in education to get a law degree when Kristin was a teen.*

IDAHO VOLUNTEER LAWYERS PROGRAM

Program Report: Idaho Volunteer Lawyers Program

Jennifer M. Schindele

On July 16th at the Idaho Law Foundation Luncheon, attorney Abbey Schulz spoke on how volunteering for the Idaho Volunteer Lawyers Program ("IVLP") had a positive impact on her. It is typical to think about the impact on clients when an attorney provides pro bono services, but we don't often consider the benefits to the attorney. Volunteering can result in improved well-being, increased self-confidence and a sense of purpose. It connects people to their communities, broadens perspectives, and can even lead to new passions.

Attorneys volunteering through IVLP provide free legal advice and review documents for low-income Idahoans at our Lawyer in the Library clinics. They also give advice and counsel over the phone during our telephone clinics. Some attorneys even take on full representation cases. The clients that receive assistance are unable to afford to pay for legal services and most live in households with annual incomes at or below 125 percent of the federal poverty guidelines.

We continue to have success thanks to our volunteers. However, we are on track this year to receive over 6,000 applications for legal services. Most of those applications are requests associated with family law, housing, and consumer issues. Unless we have more attorneys volunteer, fewer than 20 percent of those needing legal services will receive them. If you are interested in volunteering, please visit the Idaho Law Foundation website or contact me directly.[1]

Justice Uncorked

Access to Justice Idaho raises funds to support IVLP, Idaho Legal Aid Services, and Disability Rights Idaho—the three principal providers of civil legal services for low-income and vulnerable Idahoans. This year, the campaign is holding its first Justice Uncorked event. The event will be held on September 18, 2025, at Split Rail Winery. The evening will feature live music, a silent auction, dinner and wine. Tickets can be purchased on the Idaho Law Foundation's website.[2]

Pro Bono Week

Save the date for the 2025 National Celebration of Pro bono: October 19th to 25th! Every October, the American Bar Association ("ABA") holds a week-long celebration for pro bono. Pro Bono Week is an opportunity to show appreciation for the remarkable pro bono work being done by volunteer lawyers and legal professionals.

According to the ABA, pro bono work is a professional responsibility and an individual ethical commitment of each lawyer. Numerous organizations nationwide are celebrating pro bono week through outdoor events, video contests, and social media campaigns.

> *...we are on track this year to receive over 6,000 applications for legal services... [u]nless we have more attorneys volunteer, fewer than 20 percent of those needing legal services will receive them.*

Here in Idaho, we plan to kick off the week on October 20th with a free CLE titled "Family Law Basics," followed by a happy hour reception. The rest of the week will involve numerous legal clinics where attorneys can volunteer for one to two hours to help those in need.

Staff Updates

In July, IVLP welcomed Amanda Olsen to our team. Amanda comes to us with years of experience in non-profit organizations and with a passion for helping those in need. Originally from Alaska, Amanda obtained her B.A. in communication science, *cum laude*, from Northwest Nazarene University with additional studies from Chapman University. Amanda has a growing interest in the legal field and has seamlessly transitioned into the IVLP Case Coordinator position. Amanda will act as a liaison between our volunteer attorneys and potential clients and will coordinate our telephone legal clinics. Additionally, Amanda will staff our Lawyer in the Library in person clinics.

In August, the IVLP Intake Coordinator, Yzabella Eggers left to pursue law school. Yzabella played an essential role in developing our Lawyer in the Library Clinics and in maintaining a productive working relationship with the Idaho Military Legal Alliance. Yzabella will be attending the University of Idaho College of Law at the Boise campus, and we look forward to having her return to IVLP as a volunteer attorney when she graduates.

Amanda Olsen.

Yzabella Eggers.

Jennifer May Schindele *is the Director of the Idaho Volunteer Lawyers Program. After spending over sixteen years practicing family law, Jennifer joined IVLP. Jennifer earned an English degree at the University of Idaho and completed law school at the University of Idaho College of Law. Jennifer enjoys spending time with her family, playing soccer, and exploring Idaho's outdoors.*

Endnotes

1. Contact Jennifer at jschindele@isb.idaho.gov or at (208) 334-4500.

2. https://ilf.idaho.gov/accesstojustice/justice-uncorked-event/.

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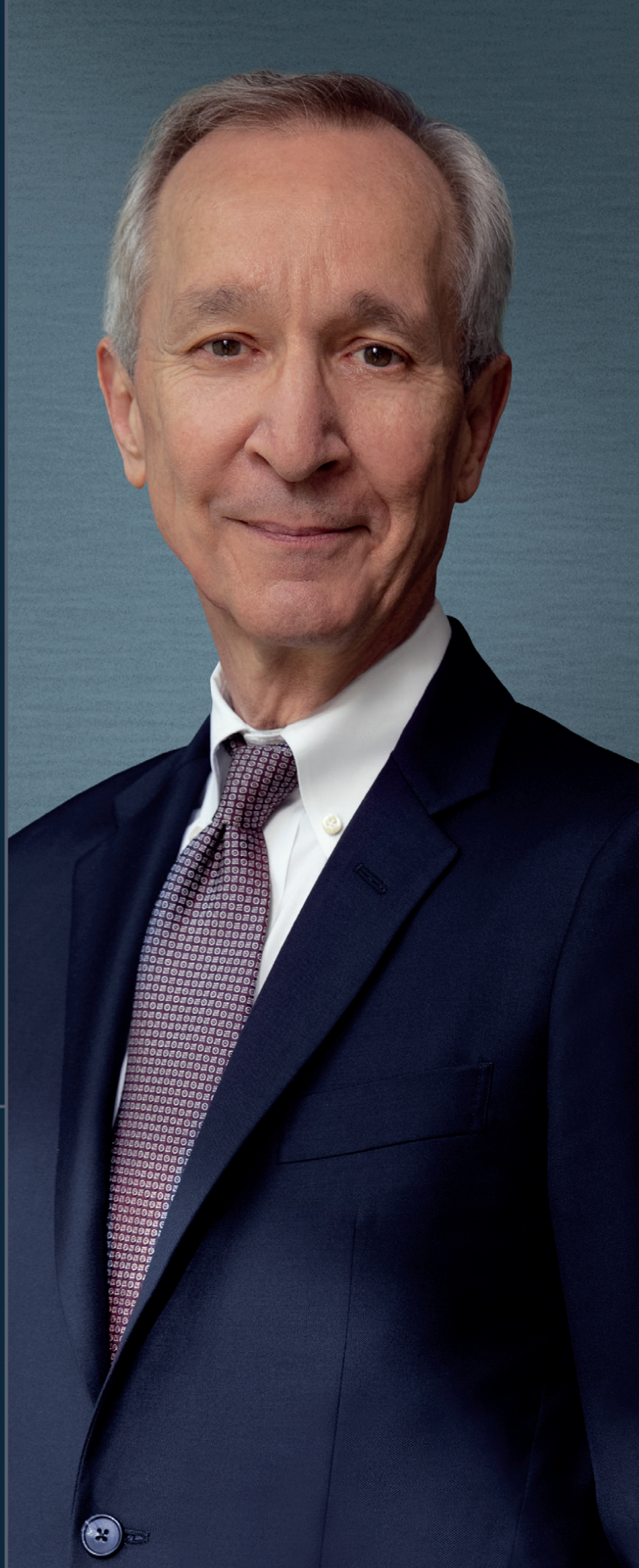

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The Role of Lawyers During the Japanese American Incarceration

Lorraine K. Bannai

Gordon Hirabayashi with (counter-clockwise) Kathryn Bannai (lead counsel 1982-85, Rodney Kawakami (lead counsel 1985-87), Benson Wong, Arthur Barnett, and Michael Leong. Photo credit: ©Michael Yamashita.

October 28, 2025, will mark the 80th anniversary of the closing of the American concentration camp at Minidoka, Idaho. Minidoka has profound meaning, of course, for the over 13,000 Japanese Americans who were imprisoned there.[1] They were among the 126,000[2] men, women, and children of Japanese ancestry ordered from their West Coast homes and incarcerated in camps across the interior of the country with no charges or hearings and based solely on their race.

This anniversary also provides an important time of reflection for those of us who are lawyers, reminding us of our essential roles in a civil society and the choices we face in upholding the rule of law. The story of the Japanese American incarceration is full of lawyers. There are examples of the best in our profession—lawyers who challenged injustice against a racial minority and the offense to our constitution.

But there are also stories of lawyers who could have done better—the lawyers who were architects and enablers of one of the greatest deprivations of civil rights in recent history, as well as those who sought to defend the incarceration in the courts and to win at all costs, even if it meant suppressing evidence before the U.S. Supreme Court.

The Ultimate Exclusion After a History of Exclusion

The Japanese American incarceration has to be viewed not as an isolated act, but as an ultimate exclusion after a history of exclusion. Soon after Japanese immigrants arrived in this country, anti-immigrant groups sought to get rid of them as threats to "American" life.[3]

Japanese immigrants were unable to become naturalized citizens. Japanese Americans were prohibited from marrying whites. Alien Land Laws barred immigrant Japanese from purchasing the land they worked. And ultimately, in

1924, the exclusionists won a ban on further Japanese immigration to the United States. Japanese Americans were viewed as foreign, untrustworthy, and perceived as economic threats.

The bombing of Pearl Harbor took place against that backdrop of racial animosity. In the days following, immigrant community leaders—Shinto and Buddhist priests, Japanese language teachers, newspaper editors, and others—were picked up under the Alien Enemies Act, an act now prominently in the news to justify current detentions and deportations.[4] In the months following, the public, the popular press, civic organizations, and public officials at every level of government called for the mass removal of all persons of Japanese ancestry, arguing that they, as an entire group, posed a threat of espionage and sabotage.

Lawyers were among the loudest voices. Earl Warren, for example, who would be celebrated as a champion of civil rights during his tenure on the U.S. Supreme Court, advocated for the removal of Japanese Americans while serving as the Attorney General of California.[5]

On February 19, 1942, in response to calls like Warren's, President Franklin Delano Roosevelt signed Executive Order ("EO") 9066.[6] It was not only a disturbingly blank check for military authorities but despite its neutral wording, it was clear it was targeted at the West Coast Japanese American community.

Congress made violation of any orders to be issued under EO 9066 a federal offense.[7] However, nothing in the statute identified the specific conduct criminalized; that conduct would be described by not-yet-issued military orders. One U.S. senator criticized the bill's vagueness: "I think this is probably the 'sloppiest' criminal law I have ever read or seen anywhere. . . I do not want to object, because the purpose of it is understood. . .. I have no doubt that in peacetime no man could ever be convicted under it."[8]

Under authority of EO 9066, Lieutenant General John L. DeWitt, the commanding officer responsible for the Western states, proceeded to issue a series of orders. One was a curfew issued against Italian and German immigrants, as well as all persons of Japanese ancestry, immigrants and citizens alike. That was followed by 108 Civil Exclusion Orders (which I'll refer to as "removal orders") posted in neighborhood after neighborhood, up and down the coast requiring persons of Japanese ancestry to report for removal. Two-thirds of those removed and incarcerated were, like my parents, American citizens.

The U.S. Supreme Court Cases

Three men resisted DeWitt's military orders and took their challenges to those orders to the U.S. Supreme Court.[9] All three were American citizens. Minoru Yasui was a 25-year-old attorney in Portland, Oregon, who set out to challenge the constitutionality of the curfew order. He walked the streets of Portland with a copy of the order in hand, but after failing to get arrested, he turned himself in at the precinct.

Gordon Hirabayashi was a 25-year-old student at the University of Washington when he defied the curfew and removal orders as acts of civil disobedience.

Fred Korematsu was a 22-year-old welder in Oakland, California, when he refused to report for removal. He chose instead to remain with his Italian American fiancé—to remain with the woman he loved in the place that had always been his home.

In each of their cases, *Hirabayashi* and *Yasui*, which involved the curfew orders in 1943, and *Korematsu*, which involved the removal orders in 1944, the Court upheld the constitutionality of the military orders, deferring to the government's claim that the mass removal was a military necessity.[10] Among the many important things about these decisions, I'll focus on two.

The first point—the danger of court deference to executive decisions—has become highly relevant today. The government argued that the Court had to defer to government decisions related to national security. The Court agreed. In *Hirabayashi*, the Court stated, "[W]here, as they did here, the conditions call for the exercise of judgment and discretion by the war-making branches of government, *it is not for any court to sit in review* of the wisdom of their action or substitute its judgment for theirs."[11]

Secondly, although expressing deference to military officials, the Court still explained why the government's actions were justified. While claiming its actions were based on military necessity, the government could not point to any evidence that Gordon, Min, Fred, or other Japanese Americans had committed or threatened to commit any acts of espionage or sabotage.

Two-thirds of those removed and incarcerated were, like my parents, American citizens.

Instead, the government argued, and the Court agreed, that military necessity existed because Japanese Americans had certain racial characteristics that showed they were unassimilated and susceptible to influence from Japan. These "characteristics" were based on stereotypes and racially biased assumptions.[12] Further, the Court accepted the government's argument that the mass removal was necessary because there was insufficient time to separate the loyal from the disloyal.[13] This, despite the fact that the first removal orders were issued almost four months after the bombing of Pearl Harbor.

In the end, the Court held that both the curfew and mass removal of Japanese Americans were constitutional because they were based on military necessity.

While the Court unanimously upheld the curfew orders in *Hirabayashi*, three justices wrote vigorous dissents to the Court's decision upholding the removal orders in *Korematsu*. Justice Owen Roberts said, "[this is not a] case of temporary exclusion. . .. On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry . . . without evidence or inquiry concerning his loyalty and good disposition towards the United States."[14]

Justice Robert Jackson objected, stating that there was no evidence taken on the factual basis for the removal orders. "So the Court, having no real evidence before it, has no choice but to accept General DeWitt's own unsworn, self-serving statement, untested by any cross-examination, that what he did was reasonable."[15] And he warned that "[a judicial validation of this order] lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."[16]

It was not all bad news for Japanese Americans the day the Supreme Court issued the *Korematsu* decision. The Court also issued its decision in *Ex Parte Endo*.[17] After her incarceration, Mitsuye Endo filed a petition for writ of habeas corpus to gain her release. The government had a two-stage process that would allow some Japanese Americans to leave camp for the interior of the country. Mitsuye had completed the first step by establishing her loyalty. However, the government further required that she and others seeking to leave further show that, for example, they had a means of support at their destination and that the community would be receptive to them. The Supreme Court agreed with Mitsuye that she was entitled to release once her loyalty was established.

Fred Korematsu with (counter-clockwise) Peter Irons, Lorraine Bannai, Dennis Hayashi, Don Tamaki, and lead counsel Dale Minami. Photo by Crystal Huie. Courtesy of Minami Yamauchi Kwok and Lee Foundation.

The camps began to close. Although the Supreme Court's decisions in *Hirabayashi*, *Yasui*, and *Korematsu* were soundly criticized soon after they were decided,[18] they hung like a cloud over the Japanese American community as the highest court's pronouncement that their incarceration was justified.

Newly Discovered Evidence[19]

For almost 40 years, Gordon, Min, and Fred hoped for an opportunity to reopen their cases. An opportunity arose in 1981. Professor Peter Irons and archival researcher Aiko Herzig-Yoshinaga found remarkable documents proving that the government had suppressed, altered, and destroyed material evidence while arguing the Japanese American cases before the Supreme Court.[20]

The documents revealed that General DeWitt's "Final Report," relied on by the government to explain the reasons for his military orders, had been altered to support the government's position before the Court. The government had consistently argued that mass removal was necessary because there was not sufficient time to separate the loyal from the potentially disloyal.

However, DeWitt's report actually contradicted the government's position before the Court, explaining that lack of time was not the basis for his orders. Instead, he stated that one could never separate the "sheep from the goats" within the Japanese Americans community no matter how much time one had.[21]

When the War Department saw DeWitt's report, the report was ordered revised to align with the government's position in court, and the original versions of the report were destroyed. One copy of the original report survived, and the soldier who destroyed the reports did not destroy his memo confirming the destruction. The Supreme Court in Fred's case saw only the altered version.[22]

Further, the government, while arguing before the Supreme Court, had within its possession intelligence reports from the FBI, the FCC, and the Office of Naval

Intelligence that contradicted DeWitt's claims of Japanese American espionage and that refuted the necessity of any mass incarceration.[23]

Justice Department lawyer, Edward Ennis, urged his superiors to tell the Court of these reports. In a memo to Solicitor General Charles Fahy, Ennis urged, "I think we should consider very carefully whether we do not have a duty to advise the Court of the existence of the Ringle memorandum. . .. It occurs to me that any other course of conduct might approximate the suppression of evidence."[24] He was overruled.

Justice Department lawyer, John L. Burling, tried to insert a footnote in the government's brief in *Korematsu* to advise the Court that the Department had information contradicting DeWitt's report, but the footnote was ordered revised, so the Court never learned of the falsity of the report.[25]

Based on this evidence that the government had lied to the Supreme Court, legal teams were formed to reopen Gordon, Min, and Fred's WWII cases. The teams were multicultural, and many were third generation Japanese Americans whose families had been incarcerated. Gordon, Fred, and Min were extraordinary clients. They knew their cases did not belong to them alone. They understood that their cases represented not only a way to achieve some measure of justice for Japanese Americans, but also a way to address a profound failure of our legal system—that their cases were about the need to protect civil liberties even during, or perhaps especially during, times of crisis.

In January 1983, three teams of lawyers filed petitions for writ of error coram nobis, one for Fred in San Francisco, California; one for Gordon in Seattle, Washington; and one for Min in Portland, Oregon. A petition for a writ of error coram nobis—a request to a court to correct an error committed "before us" (the court)—is an ancient writ that allows a petitioner to seek vacation of their conviction after their sentence has been served on proof that the conviction was the result of a manifest injustice, which, in these men's cases, was prosecutorial fraud.[26]

Months and years of legal wrangling followed. The government sought delay after delay. At one point, the government offered the men pardons, which the men rejected because a pardon normally implies that one was guilty and was being forgiven. They knew they had done nothing wrong.[27]

Fred's case proceeded first. On November 10, 1983, Judge Marilyn Hall Patel vacated Fred's conviction based on finding that the government withheld evidence in seeking to justify its actions during WWII.[28]

In Min Yasui's case, Judge Robert C. Belloni reached a different result. The government agreed that Min's conviction should be vacated, but concluded that, because it agreed to vacation of his conviction, there was no need for the court to address his claims of prosecutorial misconduct. The court agreed.[29] Min appealed, arguing that the court should have made findings on the government fraud, but he died before his appeals were completed.

Minoru Yasui with his lead counsel, Peggy Nagae.

Gordon's case proceeded to a hearing at which WWII Department of Justice attorney, Edward Ennis, testified to the suppression of evidence. The Ninth Circuit vacated Gordon's convictions.[30]

The cases proved that the government's wartime orders were not based on any military necessity.

> *...their cases represented not only a way to achieve some measure of justice for Japanese Americans, but also a way to address a profound failure of our legal system...*

The Meaning for Us as Lawyers

The coram nobis cases teach much about the roles we have as lawyers. During World War II, there were those who could and should have done better: lawyers who carried out the incarceration and lawyers who suppressed, altered, and destroyed evidence to win before the Supreme Court.

But it is also important to remember Department of Justice lawyers Edward Ennis and John Burling who spoke out against the actions of their superiors, as well as the lawyers who represented Fred, Gordon, and Min pro bono. They represented the best of our profession.

Many of those who played roles during the wartime incarceration later expressed their regret. Chief Justice Earl Warren later said,

> It was wrong to react so impulsively, without positive evidence of disloyalty, even though we felt we had a good motive in the security of our state. It demonstrates the cruelty of war when fear, get-tough military psychology, propaganda, and racial antagonism combine with one's responsibility for public security to produce such acts.[31]

Further, the wartime incarceration and cases show the very real danger when courts fail to fulfill their constitutional role to act as a check on their coordinate branches of government. During World War II, the Supreme Court stepped aside and deferred to the government. The Court, in so doing, was willfully blind in rubber-stamping the racial discrimination.

Fast forward to 2018. In *Trump v. Hawaii*, Chief Justice John Roberts, on behalf of a majority of the U.S. Supreme Court, upheld the President's ban on travel from mainly Muslim-majority countries.[32] While noting candidate and President Trump's prior anti-Muslim statements, the Court expressed the same deference to the government's claims as it did in the wartime Japanese American cases. The *Trump* Court said, "we cannot substitute our own assessment for the Executive's predictive judgments on [national security] matters, all of which 'are delicate, complex, and involve large elements of prophecy.'"[33]

In her dissent in *Trump*, Justice Sonia Sotomayor drew parallels between the travel ban and *Korematsu*, including the group-based assumption of guilt and the Court's deference to the government's claims.[34] In response, Justice Roberts for the majority said that "*Korematsu* has nothing to do with this case."[35]

While distinguishing *Korematsu*, Justice Roberts still took the opportunity to repudiate it, stating "*Korematsu* was gravely wrong the day it was decided, and has been overruled in the court of history, and—to be clear—has no place in law under the Constitution."[36] It is impossible to know what he meant in saying that *Korematsu* has been overruled "in the court of history," but the Court's opinion itself shows it did not overrule one of the most dangerous aspects of *Korematsu*—that courts should step aside and accept the government's actions whenever it claims they are "plausibly related" to national security.[37]

My own view is that the actions of Congress and the President must always be subject to constitutional limits, and the courts must always decide in the end whether Congress and the President have acted in a justifiable manner. As the coram nobis cases of the 1980s proved, the failure of courts to question and examine the government's claims of necessity can create fertile ground for fraud and misrepresentation.

In her opinion vacating Fred's conviction, Judge Patel reflected on the lasting meaning of *Korematsu*:

> Korematsu . . . stands as a constant caution . . . that in times of distress the shield of . . . national security must not be used to protect governmental actions from close scrutiny. It stands as a caution that in times of international hostility . . . our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused."[38]

The Coram Nobis Cases: Gordon Hirabayashi, Fred Korematsu, and Min Yasui

October 2025

Join The Friends of Minidoka, Minidoka National Historic Site, the National Park Service and community partners for the 2025 Civil Liberties Symposium, The Coram Nobis Cases: Gordon Hirabayashi, Fred Korematsu, and Min Yasui. Learn about these landmark cases and the overturning or vacating of the criminal convictions for their WWII wartime civil disobedience. Kathryn Bannai, Lorraine Bannai, and Peggy Nagae, attorneys from the three legal teams, will discuss their cases and implications for today.

The Symposium will be offered on three dates in October, ahead of the 80th anniversary of the closing of the Minidoka Concentration Camp.

October 7, 2025
University of Idaho College of Law, Boise, ID

October 8, 2025
The Egyptian Theatre, Boise, ID

October 9, 2025
The Community Library, Ketchum, ID

Visit minidoka.org for more information.

Finally, the wartime incarceration reminds us of the critical importance of not turning away when we have the ability to act. We need to preserve civil liberties, not only for vulnerable communities, but also for future generations. During World War II, few spoke out to protect Japanese Americans. Although some brave individuals and a few religious groups like the Quakers opposed the incarceration, none of the major civil rights groups at the time opposed it when it occurred, and a silent majority let it happen.

As lawyers with the proverbial keys to the courthouse, places like Minidoka remind us of what happens when our system of laws fails and that it uniquely falls on us lawyers to be the first responders.

Lorraine K. Bannai *is Professor Emerita at Seattle University School of Law and helped direct the Fred T. Korematsu Center for Law and Equality there. While in practice, she served on the legal team that successfully challenged Fred Korematsu's World War II conviction for refusing to comply with orders that resulted in the forced removal of Japanese Americans from the West Coast. Her books include the co-authored* Race, Rights, and National Security: Law and the Japanese American Incarceration, *and her biography of Fred Korematsu,* Enduring Conviction: Fred Korematsu and His Quest for Justice.

Endnotes

1. For a history of the wartime incarceration of Japanese Americans, *see*, e.g., Comm'n on Wartime Relocation and Internment of Civilians, *Personal Justice Denied* (1982). See also Densho: The Japanese American Legacy Project, https://perma.cc/HLJ8-9CQZ (last visited July 23, 2025), for its outstanding collection of information, interviews, and archival materials on the incarceration. For the history of Minidoka, see the Friends of Minidoka website, https://www.minidoka.org/.

2. Irei Project, About, Irei: *National Monument for the WWII Japanese American Incarceration*, https://ireizo.org/about/ (last visited July 23, 2025).

3. For more information on early anti-Japanese discrimination and the history of the wartime incarceration, see Eric K. Yamamoto, Lorraine K. Bannai & Margaret Chon, *Race, Rights and National Security: Law and the Japanese American Incarceration* 29–86 (3d ed. Wolters Kluwer 2021) [hereinafter Yamamoto, *Race, Rights*].

4. Alien Enemies Act, 50 U.S.C. § 21 (1940).

5. Personal Justice Denied, *supra*, at 2.

6. Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942).

7. Act of Mar. 21, 1942, Areas or Zones, Restrictions, Pub. L. No. 77-503, 56 Stat. 173 (1942).

8. Congressional Record, Mar. 19, 1942, p. 2726 (quoted in Personal Justice Denied, *supra*, at 2).

9. For a discussion of these three men and their cases, see Peter Irons, *Justice at War* (1983).

10. *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Yasui v. United States*, 320 U.S. 115 (1943); *Korematsu v. United States*, 323 U.S. 214 (1944).

11. *Hirabayashi*, 320 U.S. at 93 (emphasis added).

12. *Id.* at 96–99.

13. *Id.* at 99.

14. *Korematsu*, 323 U.S. at 225–26 (Roberts, J., dissenting).

15. *Id.* at 245 (Jackson, J. dissenting).

16. *Id.* at 246 (Jackson, J. dissenting).

17. *Ex Parte Endo*, 323 U.S. 283 (1944).

18. Eugene V. Rostow, *The Japanese American Cases--A Disaster*, 54 Yale L.J. 489, 503 (1945).

19. For further discussion of the government's wartime suppression of evidence and the coram nobis cases, *see* Peter Irons, *Justice at War* (1983); Yamamoto, *Race, Rights* at 221–329.

20. For a discussion of the suppression of evidence, *see* Irons, *Justice at War*, *supra*; the Petition for Writ of Error Coram Nobis and Exhibits, available at https://ddr.densho.org/ddr-densho-405-1/ (the same petition was filed in all three cases); and the film Alternative Facts: The Lies of Executive Order 9066, https://www.kanopy.com/en/product/alternative-facts-lies-executive-order-906. For a discussion of the coram nobis cases, the Petition, and Exhibits, see, e.g. Coram Nobis Cases, https://encyclopedia.densho.org/Coram_nobis_cases/ and https://ddr.densho.org/ddr-densho-405/.

21. Yamamoto, *Race, Rights*, at 231–37. *See also* DeWitt Report, Japanese evacuation from the West Coast, 1942 (book), https://encyclopedia.densho.org/Final_Report,_Japanese_Evacuation_from_the_West_Coast,_1942_(book)/.

22. *Id.*

23. *Id.* at 237–49.

24. *Id.* at 245–48.

25. *Id.* at 244–57.

26. Margaret Chon, *Remembering and Repairing: The Error Before Us, In Our Presence*, 8 Seattle J. for Soc. Just. 643, 645-46 (2010).

27. For an account of the coram nobis cases, *see* Yamamoto, *Race, Rights*, Ch. 5; Peter Irons, *Justice Delayed: The Record of the Japanese American Internment Cases* (1989); Kathryn A. Bannai, *Gordon Hirabayashi v. United States: "This is an American Case,"* 11 Seattle J. for Soc. Just. 41 (2012); Peggy Nagae, *Justice and Equality for Whom? A Person Journey and Local Perspective on Community Justice and Struggles for Dignity*, 81 Or. L. Rev. 1133, 1141–42 (2002); Lorraine K. Bannai, *Enduring Conviction: Fred Korematsu and His Quest for Justice* (2015).

28. Yamamoto, *Race, Rights*, at 275–92; *Korematsu v. United States*, 584 F. Supp. 1406, 1419 (N.D. Cal. 1984).

29. *Id.* at 292–94.

30. *Id.* at 294–312; *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987).

31. Earl Warren, *The Memoirs of Earl Warren* 149 (1977).

32. *Trump v. Hawaii*, 585 U.S. 667 (2018). For a discussion of how the Court in *Trump* gave new life to *Korematsu v. United States*, *see* Lorraine K. Bannai, *Korematsu Overruled? Far From It: The Supreme Court Reloads the Loaded Weapon*, 16 Seattle J. Soc. Just. 897 (2018) and Yamamoto, *Race, Rights* at 409–53.

33. *Trump*, 585 U.S. at 708 (quoting *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948)).

34. *Id.* at 752 (Sotomayor, J., dissenting).

35. *Id.* at 710.

36. *Id.*

37. *Id.* at 670.

38. *Korematsu*, 584 F. Supp. at 1420.

Fast-Track Fairness in Immigration

Mariella Diaz

In today's immigration landscape, "fast-track fairness" seems less like a commitment to justice and more like a punchline, an ironic slogan for a system where federal officials are micromanaged into enforcing policies that sidestep constitutional protections. While the Fifth and Fourteenth Amendments promise due process and equal protection to all people, the current administration's zero-tolerance approach has redefined equality and due process with all the finesse of a bureaucratic bulldozer. Meanwhile, foreign people facing prolonged detention do not enjoy the Sixth Amendment right to counsel, guaranteed to all criminal defendants who are about to lose their freedom, leaving these people to navigate complex legal proceedings alone. Programs like Project Homecoming,[1] marketed as humane and voluntary, rely on the CBP Home Mobile App to nudge people toward self-deportation with a digital smile.

This article unpacks how such policies distort the rule of law, blur the line between enforcement and abuse, and repackage coercion as compassion, all under the banner of "fairness."

In the third week of June, immigration attorneys from across the country gathered for the annual immigration law conference hosted by the American Immigration Lawyers Association ("AILA") in Denver, Colorado.[2] This year's meeting took on a somber and urgent tone, reflecting the immense challenges faced by both practitioners and the communities they serve. The conference highlighted the growing need for professional support, practical legal tools, up-to-date resources, and a sense of solidarity among immigration attorneys navigating an increasingly hostile legal and political landscape.

Among the panelists were former government officials with decades of service across multiple administrations, some dating back to President Clinton. These seasoned professionals shared a rare, candid look into the internal workings of immigration policy under the current administration. They described an environment increasingly marked by micromanagement, harassment, and even coerced departures from public service. In contrast to prior administrations, regardless of political affiliation, there was, they noted, a consistent respect for the rule of law and the expertise of career civil servants. According to their testimony, that respect has been entirely abandoned.

The Fourteenth Amendment of the United States Constitution, Section One, guarantees certain rights to *all persons* within the United States:

> (1) No state shall deprive *any person* of life, liberty, or property without due process of law;
> (2) Nor deny *any person* within its jurisdiction the equal protection of the laws.[3]

The framers of the Constitution purposefully chose the words "all persons," not "all citizens." This choice was deliberate, reflecting a belief that basic constitutional protections should extend to anyone within U.S. borders, regardless of citizenship or immigration status.[4]

Yet the erosion of those constitutional protections has become especially visible in the implementation of the administration's so-called zero-tolerance immigration policy. Because nothing quite embodies the spirit of the Fourteenth Amendment—particularly the part about not depriving *any person* of life, liberty, or property without due process—like expedited removals, indefinite detention, and legal processes carried out with little oversight or accountability.

Evidently, to the current administration, "all persons" was a nice phrase for the history books, but not necessarily for immigration enforcement. In current practice, this administration's zero-tolerance immigration policy has frequently led to violations of constitutional rights, especially through the aggressive expansion of expedited removal procedures inside the United States and the empowerment of newly deputized individuals who often lack any formal understanding of the rule of law or constitutional protections.[5]

These changes, issued through internal U.S. Immigration and Custom Enforcement ("ICE") memorandum, have granted both government officials and deputized agents with broad authority to detain and remove individuals, often without proper oversight, transparency, or due process. When such unchecked discretion is given without accountability, it fosters a dangerous environment in which personal bias, discriminatory practices, and excessive use of force may go unchallenged. Such unchecked authority opens the door to abuse of power, discriminatory enforcement, excessive use of force, and the targeting of vulnerable populations. Without clear legal boundaries and accountability mechanisms, personal bias and systemic injustice can go unchallenged.

The result is a justice system that not only fails to protect individual freedoms but also undermines public trust in democratic institutions, not to mention local law enforcement community relational policing efforts. In a society governed by the rule of law, the power to detain and remove individuals must be exercised with transparency, oversight, and respect for human dignity.

This absence of due process in immigration enforcement stands in sharp contrast to the criminal justice system, where constitutional safeguards like the right to counsel are not just expected, they are guaranteed. In the criminal justice system, individuals facing the loss of liberty are secured the right to legal representation, even if they cannot afford it.

The Sixth Amendment ensures that anyone at risk of incarceration has access to counsel. This principle was firmly established in the landmark 1963 case, *Gideon v. Wainwright*, 372 U.S. 335, in which the U.S. Supreme Court held that the right to counsel is fundamental to a fair trial. Clarence Earl Gideon, a poor man convicted in Florida after being denied a lawyer, had his conviction overturned by the Court, which affirmed that legal representation must be provided by the state in criminal prosecutions.[6]

Public defenders play a crucial role in upholding this constitutional guarantee. They provide skilled legal defense to individuals who cannot afford private counsel, helping to ensure that every person, regardless of income, receives a fair trial. Their work not only safeguards individual rights, but also reinforces the integrity of the criminal justice system by holding the government accountable to its burden of proof.

Immigration proceedings, however, operate under an entirely different set of rules. Noncitizens, even when detained for months or years and facing the loss of liberty, are not guaranteed the right to legal representation and have no right to a government-appointed attorney. This disparity creates a two-tiered justice system. While criminal defendants are entitled to legal representation, immigrants, many of whom face life-altering consequences such as indefinite detention, permanent family separation, or deportation to dangerous and sometimes unfamiliar countries, are expected to navigate a complex and opaque legal process *alone*, if they cannot afford to hire an attorney.

The absence of counsel in an immigration court has devastating consequences. Studies consistently show that immigrants with legal representation are far more likely to be released from detention, succeed in their cases, and avoid deportation. Without counsel, people, including *children*, asylum seekers, and long-term residents, must defend themselves in unfamiliar legal territory, many times hostile, impatient, rushed, and often in a language they do not understand. This stark inequality undermines the foundational principle that justice should

When such unchecked discretion is given without accountability, it fosters a dangerous environment in which personal bias, discriminatory practices, and excessive use of force may go unchallenged.

not depend on wealth or privilege. This wears away the basic principle that justice should not depend on wealth or privilege and highlights a glaring inconsistency in how legal rights are applied depending on a person's status.

The lack of a right to free counsel in immigration proceedings exposes a critical gap in the legal system, where due process is compromised and human rights are too often overlooked and now this administration is exploiting that fact.

Imagine you're enjoying a trip to Paris, taking in the Eiffel Tower, savoring croissants, soaking up the culture, when the days passed and you accidentally let your visa expire because, well, you were just having too good of a time. Then one day, you run a red light. A French-speaking police officer stops you, but you've left your driver's license back at your place. You try to explain, but your accent gives you away as a foreigner.

Suddenly, what started as a simple traffic stop turns serious: you're arrested. Without much explanation (and in a language you barely understand), you're told immigration authorities have been notified and that an immigration hold is now on your record. Instead of being released after a brief detention, you're shuffled off to a facility in another state with a "mandatory" detention (because you entered in the last two years, and you are a "priority"), waiting, sometimes weeks, for a bus or a plane filled with others in the same predicament to take you back to your home country or another location assigned by the government.

During this entire nightmare, you have no access to a lawyer who speaks your language or can explain your rights. You're handed a stack of official legal papers, written only in French, that you're expected to sign.

These documents might even waive your rights or agree to your deportation, but how could you really know? What could be more charming than having a minor traffic slip-up spiral into an international immigration nightmare? Getting arrested for forgetting your license and then treated like a national security risk, that's a story for the ages.

> *...when you trade the rule of law for convenience, no one stays safe for long.*

Being forced to navigate a complex legal maze without a lawyer, in your language, facing unknown laws and legal process, not knowing your rights or if you have any, all the while being pressured to sign mysterious documents written in another language could change your life for some time to come, possibly for forever.

Today, in the United States, it is just another day in the thrilling country of zero-tolerance enforcement! This is a key reason why multiple countries have issued travel advisories for their citizens traveling the United States.

This administration's approach to immigration policy has further undermined the rule of law, even within the courtroom itself. One recent example is the rollout of *Project Homecoming*, a program supported by the CBP Home Mobile App, aimed at encouraging the voluntary departure of individuals unlawfully present in the United States. On May 5, 2025, a new EOIR flyer titled, "Message to Illegal Aliens: A Warning to Self-Deport" appeared in all immigration court communications and was posted in courthouses across the United States.[7] The message further warned of consequences like daily fines up to $1,000, jail time, and "immediate deportation" by ICE. It promotes the CBP Home mobile app as a "safe" way to self-deport and offers a $1,000 stipend as an incentive.[8]

The initiative is framed as a streamlined, incentive-based option to leave the country, but it carries serious and often misunderstood legal consequences. While branded as "voluntary," participation in Project Homecoming may result in long-term bars to reentry, typically three or ten years, depending on the length of unlawful presence. Additionally, individuals who choose this route may unknowingly waive important legal rights, including the ability to apply for relief from removal or to challenge their deportation in immigration court. The data submitted through the app can also be used for future enforcement actions, raising significant concerns about privacy, informed consent, and due process.

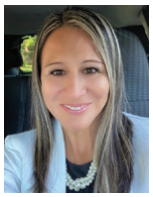
Moreover, Project Homecoming is presented by the government as a cost-saving and administratively efficient alternative to formal removal proceedings, it may, in practice, exert undue pressure on noncitizens to accept voluntary deportation. This is particularly concerning when individuals lack access to legal counsel or the financial means to hire an attorney who could help them understand their rights and the long-term legal and personal consequences of such decisions. Without adequate representation or a clear grasp of their options, many may feel coerced into compliance, even when they may have viable defenses to removal or eligibility for relief under immigration law.

In a system already characterized by profound disparities in access to justice, the expansion of programs like Project Homecoming risks further marginalizing vulnerable populations, particularly those with limited resources, language barriers, or histories of trauma. Rather than promoting fairness or efficiency, these practices may instead erode the foundational principles of due process and equal protection. By bypassing traditional court proceedings, minimizing oversight, and accountability such initiatives mark a troubling shift in immigration enforcement, one that increasingly distances itself from constitutional safeguards and the rule of law.

So here we are, celebrating a system that punishes the powerless, sidesteps the Constitution, and calls it progress. Who needs due process when we have buzzwords like "zero tolerance," "national security risks," "invasion" and "border security"? Why bother with fairness when efficiency and security make such great headlines? In this brave new world of immigration enforcement, justice isn't blind, it's just missing. Lady Justice has disappeared. If we keep applauding this erosion of rights as policy success, we shouldn't be surprised when the same broken system comes for the rest of us. After all, when you trade the rule of law for convenience, no one stays safe for long.

And yet, despite being the frequent targets of this increasingly punitive system, foreign individuals or immigrants continue to contribute immensely to the fabric of American life. They pay billions in taxes, help sustain Social Security and Medicare (even though many undocumented immigrants can never legally claim those benefits) and start businesses at higher rates than native-born citizens, creating jobs and driving innovation. They are essential workers in healthcare, agriculture, construction, technology, and in our legal system, filling critical labor shortages and keeping our economy running.

Beyond economics, immigrants enrich our culture through language, food, art, and tradition, making our communities more vibrant and diverse. They serve in the military, engage in civic life, and lead in their neighborhoods. Immigrants embody resilience and determination, often overcoming enormous barriers just for the chance to contribute. In a country facing an aging population and shrinking workforce, immigrants are helping to secure our future. Simply put, they are not just part of America's past and present, but they are vital to its future. And as much as this administration may try to portray them as a threat, immigrants are, in fact, our *strength*. It's time our policies and our rhetoric reflected that truth.



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Endnotes

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6. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

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The New Front Lines of Immigration Defense

Maria E. Andrade

Introduction

Immigration policy has dominated recent presidential campaigns, and since January 2025 the Trump Administration has aggressively pursued its promise to arrest and remove as many noncitizens as possible.[1] Within six months, the Trump Administration has used immigration courts to lodge national security removal grounds against political activists, dramatically increased the use removal orders issued by immigration officials instead of judges, and invoked wartime powers to summarily expel noncitizens from the United States in its mass deportation campaign.

This article examines the traditional procedures used to remove noncitizens under the Immigration and Nationality Act ("INA"), highlights key procedural and substantive distinctions between criminal and civil removal proceedings, explores lesser-known summary removal mechanisms, and reviews how the Trump Administration has asserted wartime powers to detain and deport noncitizens.

Judicial Removal Proceedings

Of all the mechanisms available to the government for removing a noncitizen from the United States, a removal hearing before an immigration judge offers the noncitizen the greatest chance of a full and fair hearing. The proceedings are governed by Section 240 of the Immigration and Nationality Act and carried out by the Executive Office of Immigration Review ("EOIR"). The noncitizen may appeal to the Board of Immigration Appeals,[2] and can raise legal and constitutional claims to the U.S. Court of Appeals by petition for review.[3]

Noncitizen respondents can hire a lawyer to represent them, and review or present evidence.[4] While these legal rights exceed those afforded noncitizens who are deported through non-judicial removal proceedings, they are far fewer than those given criminal defendants. Judicial removal hearings are typically reserved for noncitizens found in the interior of the United States who have not been previously removed.[5]

Immigration court operation has been directly affected by the Trump Administration's mass removal effort and its immigration policy generally.[6] The Trump Administration has shown its willingness to charge noncitizen political activists with foreign policy grounds of removal. The well publicized arrest and detention of Columbia University graduate student Mahmoud Kahlil and Tufts University student Rumeysa Ozturk are stark examples of this new trend.[7] This aggressive approach threatens the first amendment rights of noncitizens and exposes them to the prospect of removal proceedings under the guise of national interests, even outside the context of wartime powers.[8]

Compounding these concerns, U.S. Immigration and Customs Enforcement ("ICE") has begun to systematically arrest noncitizens with ongoing court proceedings in order to subject them to nonjudicial removal hearings.[9] While ICE was previously barred from making arrests at places like courthouses, schools and churches, the agency is now encouraged to do so.[10] Further, immigration judges are encouraged by EOIR leadership on how to facilitate the arrests by terminating cases that the government moves to dismiss.[11]

Noncitizens have minimal rights in immigration proceedings, as compared to the rights afforded criminal defendants, because "deportation is a purely civil action to determine if a person is eligible to remain in the country as opposed to criminal action," and as a result "... various protections that apply in the context of a criminal trial do not apply in a deportation hearing."[12] For example, anything is admissible as evidence in immigration

While a noncitizen has the right to hire an attorney at their own expense, only 30 percent of noncitizens, including children, the elderly, and detained individuals, have legal representation.

court so long as the judge deems it probative and fundamentally fair to admit—the Federal Rules of Evidence do not apply.[13]

One of the most consequential differences between criminal and civil immigration court is the lack of free, appointed counsel for indigent noncitizen respondents fighting removal. While a noncitizen has the right to hire an attorney at their own expense, only 30 percent of noncitizens, including children, the elderly, and detained individuals, have legal representation.[14] A lack of individual resources, free private services, conditions of detention and a decreasing number of removal defense lawyers are common barriers to securing counsel.

Thousands of noncitizens are required to represent themselves in what courts have consistently acknowledged as an exceptionally complex area of law.[15] Astonishingly, in the course of litigation seeking appointed counsel for children, a senior immigration judge claimed that he could teach children as young as three immigration law sufficiently so they could represent themselves.[16] In response, immigration attorneys recorded mock hearings with toddlers and released them to the media.[17]

It was not until 2011 that noncitizens were entitled to a mental competency hearing to determine whether they could represent themselves, and under what conditions.[18] However, there was no clear authority or procedure for an immigration judge to appoint counsel, leaving judges the option of terminating proceedings or proceeding. In 2013, a federal lawsuit led to a national EOIR policy to provide free counsel to incompetent noncitizens in detention.[19]

In the case of Mahmoud Kahlil, the removal proceedings were brought in immigration court, enabling him to vigorously defend himself with the help of legal

Using Judicial Immigration Proceedings to Quell Dissent

On March 8, 2025, U.S. Immigration and Customs Enforcement arrested Mahmoud Kahlil as he returned from dinner with his wife. Kahlil, a Palestinian national who grew up in a Syrian refugee camp, lawfully entered the United States to study and became an LPR in 2024.[20]

As a graduate student at Columbia University, Kahlil was prominently involved in pro-Palestinian student protests. The government alleged that his activities included antisemitic speech that undermined U.S. foreign policy efforts to combat antisemitism.[21]

The government charged Kahlil under a provision of the INA that allows the removal of noncitizens whose presence or activities are considered to have "potentially serious adverse foreign policy consequences."[22] This charge has been used in the past, although infrequently, to address political speech by foreign nationals who do not receive protection and may be subject to removal.[23]

Interestingly, the provision at issue in Kahlil's case was once held void for vagueness but was later overturned on other grounds.[24] However, the issue of vagueness reappeared in Kahlil's removal case.

After ICE detained Kahlil he sought release on bond from the immigration judge who denied his request, finding that the government was substantially likely to show that he was removable as charged. However, a U.S. District Court determined the alleged charge was impermissibly vague and granted release.[25] With the detention issue resolved, Kahlil now seeks protection from removal under the INA's "withholding of removal" provisions or the Convention Against Torture because he fears persecution and torture due to his political activities.[26]

Kahlil's case is a rare and troubling example of the government using immigration law to target speech it disfavors. It raises urgent questions about the limits of dissent for noncitizens in the United States.

counsel—a stark contrast to the experience of the noncitizens arrested under the Alien Enemies Act discussed later in this article.

Summary Removal Mechanisms

In recent years, summary procedures have eclipsed traditional immigration court proceedings, accounting for the dramatic increase in removals overall.[27] For many years, most deportation statistics are driven by cases outside the immigration court framework—cases where immigration officials act as judge and jury, and legal counsel is not permitted.

Expedited Removal

To accelerate deportations, the Administration has expanded the use of a non-judicial, fast track removal process that culminates with an Expedited Removal order.[28] This process, first enacted in 1997, allows immigration officers—not judges—to summarily deport individuals who lack valid entry documents and are not U.S. citizens at the border. There is no right to counsel or appeal. Although expedited removal has broad scope, for over two decades the Department of Homeland Security ("DHS") limited its use to individuals encountered at ports of entry or within 100 miles of the border, and only if they had been in the U.S. for fewer than 14 days since 2004.[29]

In their first administration, the Trump administration tried to radically shift past practice and apply Expedited Removal to noncitizens found anywhere in the U.S. who could not prove presence in the country for the last two years.[30] The rule was blocked by litigation for failure to implement the expansion through a notice and comment process and never went into effect.[31]

In his second administration, President Trump issued an Executive Order directing the expansion of Expedited Removal as he had in his first term, but this time with a Federal Register notice.[32] Although the policy is being challenged in court, currently, DHS can apply Expedited Removal to anyone who has been in the U.S. for less than two years and cannot present evidence of lawful entry documents.[33] Idaho immigration attorneys understand that although the Idaho ICE staff resources are severely limited given the geographic responsibility, the office is not exempt from national orders to apply expedited removal within the state.

Rapid Administrative and Reinstatement of Removal Proceedings

Both Administrative Removal and Reinstatement of Removal are expedited procedures under the INA that allow immigration officers—rather than judges—to swiftly enforce removal orders against noncitizens.[35] In the case of Administrative Removal, non–lawful permanent residents who have a conviction classified as an "aggravated felony" may be subject to an order issued and enforced within as little as 14 days.[36] The complexity of what constitutes an "aggravated felony" by non-lawyers leads to legal errors, but the tight timelines make it difficult for individuals to obtain representation and mount a defense.[37]

Similarly, under Reinstatement of Removal, noncitizens who re-enter the U.S. after a previous removal can have their prior order reinstated, with enforcement possible just 10 days after issuance.[38] While both processes move quickly and do not guarantee a hearing before a judge, individuals retain the right to retain private counsel if they wish and may challenge the proceedings in federal court—though the window for such challenges is extremely limited. These

Expedited Removal: A Deal with the International Community

The expedited removal process immediately caused concern that it would infringe upon the U.S. non-refoulement obligation under the 1968 Protocol Relating to the Status of Refugees: *No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.* Therefore the U.S. created a screening process to identify persons who may qualify for protection from forcible return to their home country now contained within the Expedited Removal process.

Under the procedure, if the noncitizen tells an immigration officer they fear harm in their home country, they are referred to an asylum officer for an initial screening to assess if they have a reasonable chance for an asylum claim. Those who qualify exit Expedited Removal and enter immigration judge proceedings.[33]

Expedited Removal has long been a target of criticism for granting immigration and asylum officers sweeping authority to deny noncitizens meaningful access to the asylum process—often through a superficial and truncated screening that lacks robust procedural safeguards. These concerns have only deepened as recent administrative changes have allowed less qualified immigration officers, rather than trained asylum officers, to conduct these critical screenings.[34] As the scope of Expedited Removal broadens, the United States risks falling short of its international agreements to protect refugees as well as the standards expected by the international community.

streamlined mechanisms, while efficient, raise significant concerns about due process protections, given the high stakes and limited judicial oversight involved.

A Wartime Power Revived

The Alien Enemies Act

On March 15, 2025, the Trump Administration invoked the Alien Enemies Act ("AEA") to remove alleged members of the Venezuelan gang *Tren de Aragua* ("TdA"), marking the first use of this law in modern history outside of wartime.[39] The AEA, created in 1798 as part of the Alien and Sedition Acts, authorizes the president to detain or expel nationals of countries considered hostile or threatening.[40] Previously, it was only used during the War of 1812, World War I, and World War II for nationals of enemy countries.

The 2025 proclamation targets Venezuelan nationals aged 14 or older suspected of TdA ties. Approximately 250 individuals were summarily removed, sent directly from detention centers or public spaces to El Salvador's mega-prison: the Center for Terrorism Confinement ("Centro de Confinamiento del Terrorismo" or "CECOT"), a facility criticized for human rights violations.[41] Detainees are denied access to family, legal counsel, and due process.[42] As the identities of those detained became known, their families and attorneys publicly protested, insisting that their loved ones had no connection to gangs and had been wrongfully targeted.

For example, Jerce Reyes Barrios, a 36-year-old former professional soccer player from Venezuela, sought asylum in the United States after being tortured by government officials in his home country.[43] He was flagged as a gang member for two reasons: a tattoo of a crown with a rosary over a soccer ball—an image that actually resembles the Real Madrid soccer logo—and a social media post in which he made a gesture that is widely recognized as either "I love you" in sign language or a rock and roll symbol.[44]

To identify alleged members of the Tren de Aragua, DHS used an "Alien Enemy Validation Guide." The tool was reported to be deeply flawed by giving undue weight to tattoos as indicative of gang affiliation—even though experts later testified that TdA does not use tattoos as identifiers.[45]

The family and attorney of Andry Jose Hernandez Romero, a 31-year-old makeup artist, who was sent to El Salvador with Mr. Barrios, asserted that Andry had no criminal record in the U.S. or Venezuela and no ties to gangs.[46]

Probably the most well-known case of a mistaken arrest is that of Kilmar Armando Abrego Garcia. Despite being a national of El Salvador—not Venezuela—and having no ties to the Tren de Aragua gang, Abrego Garcia was summarily deported to El Salvador on the very day the AEA proclamation was issued.[47] This deportation violated a standing judge's order specifically protecting him from removal to El Salvador due to the risk of persecution or torture upon return.[48]

Kilmar Armando Abrego Garcia's ordeal stands as a stark example of the dangers posed by the Trump Administration's sweeping invocation of the AEA. Although the government admitted Abrego Garcia's removal was in error, they took no steps to correct the mistake for an "administrative error," yet took no steps to correct the mistake for months. Only after Abrego Garcia's attorneys filed suit did the courts intervene and order the government to return him to the United States—an order that was delayed and met with resistance at every turn. The case drew intense media scrutiny and public outcry, highlighting how carelessly and broadly the AEA was implemented. The case is a sobering reminder of the profound human cost when government power is exercised without caution, precision, or accountability.

Conclusion

Recent changes in U.S. immigration law have broadened removal powers and diminished due process protections, often to the detriment of individuals and families affected as well as the rule of law. Practices such as arresting noncitizens at courthouses undermine trust in the legal system and discourage those seeking to comply with the law from engaging with it.

The use of summary removal procedures—requiring complex legal analysis yet lacking the oversight of attorneys or judges—raises serious constitutional and due process concerns, as these actions infringe upon the already limited rights available to noncitizens. By granting sweeping authority for detention and removal without judicial oversight, the executive's use of the AEA during peacetime raises serious constitutional concerns.

Although removal is technically a civil issue, losing one's home and community can be devastating—and, as the U.S. Supreme Court stated years ago, can mean the loss of "all that makes life worth living."[49] Our collective vigilance is needed to ensure that the principles of justice, fairness, and human dignity remain at the forefront of immigration policy, even as laws and procedures continue to evolve.

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Endnotes

1. *See Guttentag, Immigration Policy Tracking Project* (Tracking Trump 1.0 and 2.0 Administration Immigration Policies) available at https://immpolicytracking.org (last visited 07/01/25). Before the April of 199The term "removal" rather than "deportation" is used throughout this article.

Before the the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, "deportation" was used rather than "removal" when physically taking or ordering a noncitizen to leave the United States. Under the IIRIRA, the term "order of deportation" was replaced with "order of removal" in most parts of the U.S. Code. The same Act consolidated former exclusion and

deportation proceedings into a single "removal" process. *See De la Rosa v. U.S. Attorney General,* 579 F.3d 1327, 1328 n.2 (11th Cir. 2007), cert. denied, 130 S. Ct. 3272 (2010).

2. 8 C.F.R. § 1003.38.

3. INA § 242, 8 U.S.C. § 1252.

4. INA § 240(b)(4), INA §240(c)(5), 8 U.S.C. §122a(c)(5); 8 CFR 1003.3(a)(1)(right to appeal)

5. These hearings are generally reserved for noncitizens found in the interior of the United States who have not been previously remove. In some cases, a person with LPR status will be referred to immigration court when returning from a trip abroad when a border official believes the person triggered a ground of removal before the return trip. *See Matter of Pena*, 26 I & N Dec. 613 (BIA 2015). (discussing when a returning LPR can be regarded as an applicant for admission).

6. Unlike federal judges who are appointed for life under Article III of the U.S. Constitution, the Attorney General appoints immigration judges and is subject to Department of Justice policy and oversight. The government attorney prosecuting is also a DOJ employee. *See* DOJ Organization Chart, available at https://www.justice.gov/agencies/chart/map (last visited 07/02/25).

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8. *See*, Knight First Amendment Inst. Press Statement: *DHS Dossiers on Ozturk, Khalil, Other Students Focused on Their Pro-Palestinian Speech, ICE Official Testifies, AAUP v. Rubio* Day 4 Trial Update (July 10, 2025) available at https://knightcolumbia.org/content/dhs-dossiers-on-ozturk-khalil-other-students-focused-on-their-pro-palestinian-speech-ice-official-testifies.

9. In May 2025, attorneys in Idaho, Oregon and Washington reported cases where DHS attorneys moved to dismiss matters for clients pursuing lawful benefits, only for ICE to arrest them upon leaving the court.

10. *See* U.S. Immigration and Customs Enforcement website: Protected Areas and Courthouse Arrests at https://www.ice.gov/about-ice/ero/protected-areas.

11. *See* AILA Practice Alert: EOIR Guidance to Immigration Judges on Dismissals and Other Adjudications, AILA Doc. No. 25061204 (06/12/2025).

12. *INS v. Lopez-Mendoza*,468 U.S. 1032, 1038 (1984); *see* Markowitz, Peter L., *Straddling the Civil-Criminal Divide: A Bifurcated Approach to Understanding the Nature of Immigration Removal Proceedings* 43 Harv. C.R.-C.L. L. Rev. 289 (2008) available at SRRN: https://ssrn.com/abstract=1015322.

13. E.g., *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 823 (9th Cir. 2003)(discussing evidentiary standards for removal).

14. TRAC Immigration: *Too Few Immigration Attorneys: Average Representation Rates Fall from 65% to 30%* Transactional Records Clearinghouse (Jan. 24, 2024) available at https://tracreports.org/reports/736/ (last visited 08/14/25); Vera Institute of Justice , Immigration Court Legal Representation Dashboard, available at https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative/immigration-court-legal-representation-dashboard (last visited 06/30/25).

15. *E.g. Usubakunov v. Garland*, 16 F.4th 1229 (9th Cir. 202)("For decades, we have described United States immigration law as a labyrinthine.")

16. *JEFM v. Lynch*, Case No. 2:14-cv-01026-TSZ (W.D. Wash.) Deposition of Honorable Jack H. Weil (10/16/2025) reposted by ACLU.org at: https://www.aclu.org/cases/jefm-v-lynch?document=jefm-v-lynch-deposition-honorable-jack-h-weil; Macleod-Ball, Kristin, *Judge Who Believes Toddlers Can Represent Themselves, Only Part of the Problem in the Battle over Representation for Kids*, American Immigration Council Immigration Blog (March 9, 2016).

17. Roy, Jessica *A judge thinks 3-year-olds can defend themselves, so immigration lawyers tired it on their own kids*, Los Angeles Times (March 12, 2016) available at https://www.latimes.com/nation/la-na-immigration-toddler-lawyers-videos-snap-html-htmlstory.html (last visited 06/30/24).

18. *Matter of M-A-M*, 25 I & N Dec. 474 (BIA 2011)

19. A 2013 agreement settled a lawsuit claiming that the 1973 Rehabilitation Act required the government to appoint counsel *See* ACACIA Center for Justice site at https://acaciajustice.org/what-we-do/national-qualified-representative-program/ (last visited 06/30/24).

20. *See Kahlil v. Trump, et al.*, Case No. 2:25-cv-01935-JMF, Am. Compl. Doc. 38 (Mar. 13, 2025), at 8. The facts recited here are drawn from the Complaint unless stated.

21. President Trump referred to Kahlil as a "Radical Foreign Pro-Hamas Student" in a social media post, while Border Czar Thomas Homan labeled him a "national security threat." *See* DHS X Post (Mar. 9, 2025), available at: https://x.com/DHSgov/status/1898908955675357314; Wilson, Rothfeld & Ley, *How a Columbia Student Activist Landed in Federal Detention*, N.Y. Times (Mar. 16, 2025).

22. *See* INA § 237(a)(4)(C)(i); 8 U.S.C. § 1227(a)(4)(C)(i) states that a noncitizen "whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable."

23. *See* Arulanantham, A. and Cox, A., Explainer on First Amendment and Due Process Issues in Deportation of Pro-Palestinian Student Activist(s), Just Security (March 12, 2005) available at: https://www.justsecurity.org/109012/legal-issues-deportation-palestinian-student-activists/ Some marginalized groups with a history of navigating their free speech rights without the protection of citizenship are actively updating resources for others. *See* Valentin, M. & Jamal, D. The Fine Print: *How Free is My Free Speech? Understanding the Intersection of Speech and Immigration Status Under the 2nd Trump Administration and Executive Summary,* Muslim Legal Fund of America (April 28, 2025) available at https://mlfa.org/how-free-is-my-free-speech-understanding-the-intersection-of-freedom-of-speech-and-immigration-status-under-the-2nd-trump-administration/.

24. *Id. citing Massieu v. Reno, 915 F. Supp. 681 (1996), and Massieu v. Reno*, 91 F.3d 416 (1996).

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26. *Id.*; Convention Against Torture, G.A. Res. 39/46, Annex, U.N. Doc. A/39/51; 8 C.F.R. § 208.16.; Even if Kahlil is removable as charged, if he can show a 51% chance of that he will be persecuted or tortured in his home country, the judge must issue an order preventing his removal.

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28. 23 INA § 235(b), 8 U.S.C. § 1225, 8 C.F.R. § 235.3. Rosenblum, M. and McCabe, K., Deportation and Discretion: *Reviewing the Record and Options for Change*, Migration Policy Institute (majority of removals occur through summary procedures, without judge or right to counsel; over 70% of ICE removals in FY 2103 were through summary procedures) (2014). Available at: https://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change (last visited 07/05/25).*Deportation and Discretion: Reviewing the Record and Options for Change*, Migration Policy Institute (majority of removals occur through summary procedures, without judge or right to counsel; over 70% of ICE removals in FY 2103 were through summary procedures) (2014). Available at: https://www.migrationpolicy.org/research/deportation-and-discretion-reviewing-record-and-options-change (last visited 07/05/25).

29. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877, 48880 (Aug. 11, 2004); American Immigration Council Fact Sheet: Removal Without Recourse (04/18/2014) available at https://www.americanimmigrationcouncil.org/fact-sheet/removal-without-recourse-growth-summary-deportations-united-states/.

30. American Immigration Council Fact Sheet: Removal Without Recourse (04/18/2014) available at https://www.americanimmigrationcouncil.org/fact-sheet/removal-without-recourse-growth-summary-deportations-united-states/ ; Congressional Research Service, Expedited Removal of Aliens: A Legal Framework (10/08/19) available at: https://www.congress.gov/crs_external_products/R/PDF/R45314/R45314.7.pdf.

31. *Id.*

32. Exec. Order No. 1415, 90 Fed. Reg. 8443 (Jan. 20, 2025).

33. Practice Advisory: *Everything Expedited Removal*, National Immigration Litigation Alliance (Feb. 7. 2025) available at https://immigrationlitigation.org/wp-content/uploads/2025/04/25.02.28-ER-FINALx.pdf.

34. *See* Altman, Heidi, *How the Biden Administration's Expanded Asylum Ban Puts Lives at Risk and Contradicts American Values*, NILC Policy Brief (Sept. 30, 2024).

35. INA § 238(b)(3), 8 U.S.C § 1228(b)(3).

36. INA § 238(b)(3), 8 U.S.C § 1228(b)(3). The INA has a distinct definition of "aggravated felony" that may include state misdemeanors and non-violent conduct. *See* INA § 101(a)(48); 8 U.S.C. § ____(a)(48)(aggravated felony definition).

37. Immigrant Defense Project, National Immigration Project *Practice Advisory: Administrative Removal under 238(b):Questions and Answers* (Feb. 16, 2017).

38. INA § 241(a)(5), 8 U.S.C. § 1231(a)(5).

39. *See* Proclamation No. 1903, 90 Fed. Reg. 13033 (Mar. 14, 2025).

40. *See* 50 U.S.C. § 21.

41. Declaration of Juanita Goebertus, Director of Americas Division of Human Rights Watch regarding prison conditions in El Salvador, (03/19/25) available at https://www.hrw.org/news/2025/03/20/human-rights-watch-declaration-prison-conditions-el-salvador-jgg-v-trump-case (last visited 07/05/25); Amnesty International, *The human cost of the repressive cooperation between the US and El Salvador*, (04/15/2025) available at: https://www.amnesty.org/en/latest/news/2025/04/la-cooperacion-represiva-entre-eeuu-y-el-salvador/.

42. *Id.*

43. *Id.* Rashid, H, *A Tattoo of a Soccer Ball is Enough to Get You Deported to El Salvador*, The New Republic (March 20, 2025). Doc. 67-21 at 429.

44. E.g. Music, M. *ICE Deported Professional Soccer Player after "I love you" Sign Language Symbol was Interpreted as Gange sign: Affidavit – The asylum seeker entered the US legally after he was tortured for protesting Venezuela's authoritarian regime*, The Latin Times (March 26, 2025) available at https://www.latintimes.

com/ice-deported-professional-soccer-player-after-i-love-you-sign-language-symbol-was-interpreted-578912.

45. Declaration of Rebecca Hanson, Case 1:25-CV-00766-JEB, Doc. 67-3, at 2-8; *Id.* Phillips, T. and Rangel, C., *Deported because of his tattoos: has the US targeted Venezuelans for their body art?*; Doc. 67-21 at 134-140; *Intelligence Assessment said to contradict Trump- on Venezuelan Gang*; Case 1:25-CV-00766-JEB , Doc. 67-21 at 141- 148.

46. A. Blitzer, John, *The Makeup Artist Donald Trump Deported under the Alien Enemies Act*, The New Yorker (March 31, 2025).

47. *See* Civil Rights Litigation Clearinghouse Case report *Abrego Garcia v. Noem*, 8:235-cv-00951 U.S. Dist. Court for the District of Maryland (filed March 24, 2025) at https://clearinghouse.net/case/46283/ containing an ongoing case timeline and court documents. where the court documents are reproduced and a detailed timeline of event.

48. One of the ways a noncitizen who is subject to removal, can avoid actually being physically removed is winning a grant of "withholding of removal" from the immigration judge. INA § 241(b)(3)(B), 8 CFR §208.16. Under U.S. immigration law and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) An immigration judge can grant this protection from removal if the applicant shows that there is a 51% chance they will be persecuted if sent to the country of removal. This form of relief is typically requested by someone who is not eligible for asylum. For overview of difference between forms of protection see "I'm afraid to go back: A Guide to Asylum, Withholding of Removal and the Convention Against Torture, (2022) available at: https://portal.ice.gov/pdf/LOPPdf/AsylumWORCATGuide/Asylum_WOR_CAT-Guide-2022_ENGLISH_508_compliant.pdf.

49. *Bridges v. Wixon*, 326 U.S. 135 (1945), *citing Ng Fung Ho v. White*, 259 U.S. 276 (1922).

Enhanced Immigration Enforcement, Where Are We in 2025?

Luis Campos Vasquez

I am an immigration and asylum lawyer, practicing in both Idaho and Arizona. Throughout the first half of 2025, several clients have been the subject of aggressive immigration enforcement. This might seem unremarkable, particularly given the now common spectacle of often violent arrests of ordinary workers, students, families, and even children. These operations are conducted under the guise of repelling invaders, arresting criminals, or going after gangs and terrorists. The difference is my clients fit none of those categories. And Erika's case is particularly compelling, a story of resilience, humanity, and the power of community. The story is also a microcosm of the many legal issues and battles surrounding immigration.

Erika is a young woman from Guatemala. After fleeing her persecutors and traversing Mexico, she hoped to reach the U.S. border to request asylum. Yet, she was left alone to wander the desert for two days, while thirty-five weeks pregnant. *Fortunately,* the Border Patrol found her. *Unfortunately*, she was not immediately taken to a hospital, but to a detention facility. Erika's physical condition further deteriorated, necessitating an urgent visit to a Tucson hospital, where she gave birth to her first child, a healthy girl. Erika was precluded, however, from sharing the joyous news, as Border Patrol agents posted at the maternity ward prevented her from making or receiving calls. Visits were strictly prohibited. A concerned hospital staffer contacted me through a human rights rapid response network, conveying Erika's precarious situation and Erika's desire to consult an attorney. When I got to the hospital, a Border Patrol agent blocked me (yes, physically blocked me) from seeing Erika, stating that I would need a signed authorization from her. The type of authorization they were referring to is the ubiquitous immigration form called a G-28. The G-28 permits attorneys to act on behalf of clients and represent them before DHS personnel, like Border Patrol. Clearly, securing her signature on this form was impossible without access to her. Can you say Kafkaesque? The best I could do was to call Erika's mother in Guatemala to give her the news. Her daughter was alive, having survived the desert, and her family had grown to include a granddaughter, Emily.

The *next best thing* I could do was reach out to the community and the press and ensure the story entered the public domain.

The story caught fire locally and by the next day, national and global media outlets reached out for comment about the

young Guatemalan woman who had survived the Sonoran Desert; given birth to a U.S. citizen child; was being held incommunicado by the Border Patrol; and was slated for *expedited removal* without the benefit of due process and proceedings to adjudicate her asylum claim. The outrage was enormous. Concerned people from across the country contacted me, asking how they could help. Local activists organized marches and protested at the hospital. They reached out to everyone they could think of, including the mayor's and governor's offices, to demand intervention. Indeed, a prominent law firm contacted me, apparently at the behest of politically influential persons, to offer help in putting together a legal team for anticipated *habeas* proceedings in federal court. (Fortunately, as will be explained below, habeas proceedings were ultimately not needed, as the government released Erika.) The community and I kept pressing and fighting for a favorable outcome for Erika and baby Emily.

By the time the hospital discharged Erika and her baby, two days after first being refused access to my counsel, the Department of Homeland Security ("DHS") reversed its position. The groundswell against the Border Patrol had been effective. Erika would be released from custody so she could make her case for asylum in "regular" removal proceedings before an immigration judge and with the benefit of due process. And on day three, she and the baby were free, dropped off by DHS at the offices of a human rights organization where I was able to retrieve them. After a quick debriefing and some time to hold the beautifully sleeping baby, Emily, my partner and I found a hotel for the two to rest. We then made arrangements for their next day highway travel to the East Coast to join the sole person she knows in the United States, a family friend from her same village in Guatemala. Notably, the resilient Erika had been oblivious to her recent fame.

Soon, Erika's case will be heard in an immigration court where I anticipate representing her to press her asylum claim. Her case is extraordinary in many respects. It represents many points in the constellation of legal issues at the forefront of immigration. There was the matter of an "unlawful" entry, a characterization at odds with a legally established right to request asylum without penalty, as per the Refugee Convention (and the 1967 Protocol, of which the United States is a signatory and party).[1] Recall DHS initially attempted to frustrate this right by announcing its intention to expeditiously remove Erika. That opening salvo signaled the government's willingness to dispense with constitutional protections, especially the Fifth and Fourteenth Amendments of the Constitution. All *persons,* independent of immigration status, are owed due process, including the right to legal counsel, as well as the right to a full and fair proceeding in which a party can challenge removability from the United States. The 2025 Executive Order No. 14159 ("Protecting the American People Against Invasion"[2]) would extinguish this right by "enhancing" currently existing expedited removal procedures, a move designed to minimize full legal protections of persons and fast track their removal.

In the case of little Emily another legal issue emerged: birthright citizenship. Emily was born on U.S. soil to an undocumented mother. The January 2025 Executive Order No. 14160 ("Protecting the Meaning and Value of American Citizenship"[3]) would seemingly dispossess Erika's baby of constitutionally guaranteed U.S. citizenship. And to be clear, it *is* a constitutional guarantee, as per the language of the Fourteenth Amendment: "*all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside.*"[4] For law nerds, this provision simply reflects the ancient legal concept *of jus soli ("right of the soil").* The Executive Order disingenuously attempts to read ambiguity into the long-established meaning of birthright citizenship, especially regarding the phrase "and subject to the jurisdiction there of." The Executive Order states: "But the Fourteenth Amendment has never been interpreted to extend citizenship universally to everyone born within the United States."[5] True, children of diplomats born on U.S. soil cannot acquire U.S. citizenship, as diplomatic families are not subject to the jurisdiction of the United States. However, it is settled jurisprudence that the immigration status (or lack of status) of the parents of children born on U.S. soil does not deprive the children of birthright citizenship. We can go as far back as 1898 for this proposition in the Supreme Court case of *United States v. Wong Kim Ark*.[6] The Executive Order's legality is in litigation now. Recently, the Supreme Court in *Trump v. Casa, Inc.*[7] failed to rule

> *All* persons, *independent of immigration status, are owed due process, including the right to legal counsel, as well as the right to a full and fair proceeding in which a party can challenge removability from the United States.*

on the merits, but rather, addressed the matter in the limited context of nationwide or universal injunctions, holding them to be inappropriate. As for Emily, she is in the process of applying for a U.S. birth certificate in her birth state, Arizona. We can only hope the language and long-held interpretation of the Fourteenth Amendment will hold in her favor.

Erika's case should also remind us how imperative it is for our sensitive spaces to remain safe for hospital patients, students, worshipers, and persons attending their court hearings. For context, DHS long refrained from operating in sensitive spaces. DHS policy (drawing on several internal memoranda) directed agents to avoid schools, houses of worship, courthouses, and hospitals when conducting immigration enforcement. The broader societal interests were clear. As a matter of public policy, we do not want to dissuade but rather encourage people to go to these kinds of places. Moreover, as a matter of humanity, the government recognized the cruelty of arresting children, patients, or worshippers. On January 20, 2025, the sensitive space policy was reversed, and prior DHS memos were rescinded.[8] The reversal allowed the Border Patrol to more easily and aggressively operate in hospitals, as I witnessed with Erika. I should add that in her case, the hospital staff was extraordinarily kind to both mother and baby and seemed visibly disturbed by the specter of a young woman detained, effectively as a prisoner in a hospital maternity ward.

Erika's recent experience in Arizona should matter for Idahoans because it is a harbinger of what may come to our state, particularly if enhanced enforcement resources are put into place by federal and state governments and if enhanced enforcement is not checked. At the time I write this, federal legislation was recently passed, increasing funding for ICE to hire 10,000 more personnel. Moreover, some states, including Idaho, have also joined the deportation frenzy by attempting to enact laws that would allow state law enforcement and judges to enforce immigration laws. Lawyers everywhere must continue to be a bulwark and zealously advocate not only for clients, but for adherence to the Constitution and the rule of law. Our government must be held to account. And as a community we should not stand on the sidelines undisturbed when the constitutional rights of foreign-born persons are targeted for extinction. The current state of immigration in the United States requires our government's attention, but not at the expense of our laws and our humanity.

Luis Campos Vasquez *is an attorney and former assistant professor of law, having taught and practiced in the areas of immigration, asylum, and international humanitarian law. He currently splits his immigration law practice between Idaho and Arizona. Whenever he can find a bit of free time, he is an avid reader of Latin American literature. The views expressed here are solely his own.*

Endnotes

1. Convention Relating to the Status of Refugees (adopted July 28, 1951, entered into force April 22, 1954) 189 UNTS 137; Protocol Relating to the Status of Refugees (adopted January 31, 1967, entered into force October r4, 1967) 606 UNTS 267.
2. 90 FR 8443 (January 20, 2025).
3. 90 FR 8449 (January 29, 2025).
4. U.S. Const. Amend. XIV, Section 1.
5. 90 FR 8449 (January 29, 2025).
6. 169 U.S. 649 (1898).
7. 606 U.S. _____ (2025).
8. *See* the DHS Directive, Enforcement Actions in or Near Protected Areas (January 20, 2025) and the subsequent ICE memorandum, "Common Sense Enforcement Actions in or Near Protected Areas" (January 31, 2025).

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The Role of 18 U.S.C. § 242 Prosecutions in Upholding Constitutional Rights

Wendy J. Olson

A federal criminal civil rights statute passed right after the end of the Civil War, 18 U.S.C. § 242, plays an important role in ensuring that law enforcement officers provide Fourth Amendment and due process protections when detaining any person in the United States and while that person is in custody. And while prosecutions under Section 242 got off to a slow start, for decades federal case law has spelled out that those protections apply with equal force to persons unlawfully in the country and that the statute's prohibition applies with equal force when private persons join with law enforcement officers to deprive any person of these important constitutional rights. Where some Idaho law enforcement agencies have joined with federal law enforcement agencies in immigration enforcement, and where reports in other states suggest that non-law enforcement persons have participated in immigration enforcement operations, a review of the substance and scope of 18 U.S.C. § 242 is timely and practical.

Section 242 Protects All Persons in the United States from Government Abuse

In *United States v. Otherson*, 637 F.2d 1276 (9th Cir. 1980), two United States Border Patrol agents were convicted in a bench trial of violations of 18 U.S.C. § 242 for orchestrating and participating in multiple assaults on persons believed to be unlawfully in the United States. Among the stipulated facts set out in the Ninth Circuit opinion affirming the agents' convictions are these: (1) on July 3 and 4, 1979, when Otherson and another agent were on duty picking up persons already apprehended and transporting them by van to a processing center, Otherson and Brown, his codefendant, repeatedly struck some of the detainees with open hands, fists, and nightsticks; (2) there was no evidence as to the identities, origins, or destinations of any of the victims, nor as to the reasons for their presence in the United States; (3) there was evidence that the agents' abuse of the individuals in their custody was part of a deliberate plan or policy, including statements from other border patrol agents that one agent asked the others, "Who's the designated hitter?" or "Are you the designated hitter?" or a similar question; and (4) a witness stated that on July 3rd, Otherson told the border patrol agent trainee working with him that "we find it necessary to do things like this because the criminal justice system doesn't do anything to these assholes."[1]

Section 242, first enacted in 1866 to address state actor violence against newly freed slaves, makes it unlawful for a person acting under color of any law, to willfully deprive any person in any state or territory of the United States of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. It has long been used to prosecute law enforcement officers, and those acting in concert with them, who intentionally use more force than

is necessary in violation of a person's Fourth Amendment rights when taking that person into custody.

But the Fourth Amendment right to be free from unreasonable searches and seizures is not the only constitutional right protected by Section 242 because law enforcement, correctional or detention officers who intentionally violate a detainee or inmate's due process or Eighth Amendment rights can be prosecuted under Section 242 as well. For example, in *United States v. Daniels,* 281 F.3d 168, 178-79 (5th Cir. 2002), the Fifth Circuit affirmed a conviction under Section 242 where a correctional officer removed an inmate from his cell to transport him to the jail medical clinic, handcuffed him, shackled his legs, and then began violently kicking and punching the inmate. The Court determined that an indictment charging Section 242 for a violation of an inmate's right to be free from cruel and unusual punishment sufficiently alleged a violation of the victim's Eighth Amendment rights.[2] In addition, persons in official custody have a due process right to be free from harm inflicted by third persons, and an official who willfully subjects a custodial subject to a deprivation of that right by failing to intercede when the third parties assault the custodial subject is subject to criminal liability.[3]

Although phrased in somewhat detailed terms and with a very high level of *mens rea*, Section 242 is at its heart a simple statute. It prohibits law enforcement officers from abusing their authority. While law enforcement officers acting under color of law can stop, detain, and arrest an individual, the consequence of that detention or arrest, including whether any punishment is appropriate, is for others in our legal system to decide.

At their bench trial, Otherson and Brown did not contest that they had beaten persons who had been taken into custody by the Border Patrol near San Ysidro, California. Rather, they made two legal arguments. First, they argued that Section 242 did not apply to their actions as federal agents because it applied only to actions taken under color of state law, not federal law. Second, they argued that Section 242 did not protect the victims because persons illegally in the United States were not "inhabitants of any State, Territory, or District" as required by Section 242.[4]

The Ninth Circuit rejected both arguments. It easily disposed of the defendants' first argument, noting that it had no support in the text of the statute, which provides that "*Whoever*, under color of any law, statute, ordinance, regulation, or custom" without restriction to state or federal law. It also noted that the Supreme Court already had expressly rejected that argument 35 years earlier.[5]

While law enforcement officers acting under color of law can stop, detain, and arrest an individual, the consequence of that detention or arrest, including whether any punishment is appropriate, is for others in our legal system to decide.

After a more detailed analysis of Section 242's history, the Ninth Circuit also rejected the border patrol agent defendants' second argument. It concluded that the language and structure of the 1870 statute that amended the initial version of Section 242, and the policy of interpreting statutes to "effectuate rather than frustrate their purpose," all provided support for the interpretation that individuals unlawfully in the United States, not just citizens, were protected by Section 242.[6] Thus, that the detainees in Otherson's and Brown's custody did or did not have lawful status in the United States was irrelevant. Section 242 applies to undocumented persons. Federal law enforcement agents, and those state officers who work with them, violate federal criminal law when they violate the constitutional rights of undocumented persons.

Private Actors Who Act in Concert with Law Enforcement Violate Section 242

Twenty years after deciding that Section 242 applied to federal as well as state law enforcement officers, the Supreme Court made clear that when persons acting under color of law involve private actors in their conduct, those private actors also may be prosecuted under Section 242. In *United States v. Price*, the Supreme Court reversed an order dismissing portions of an indictment charging nonofficial or non-law enforcement participants with violating Section 242 for their role in the assault and murders of three men in Neshoba County, Mississippi in 1964.[7] The Court held that "[p]rivate persons jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents."[8]

Price, of course, involved the murders of voting rights workers Michael Schwerner, James Earl Chaney, and Andrew Goodman, which many are also familiar with through the movie, "Mississippi Burning." The three men were detained

in the Neshoba County jail on June 21, 1964, released that evening, intercepted again by the sheriff as they tried to leave town, and transported to a place on an unpaved road, where they were met by a group of men that included law enforcement and non-law enforcement. The group of nearly twenty men assaulted, and shot and killed Schwerner, Chaney and Goodman, then buried their bodies in an earthen dam.[9] Ultimately, seven men, both law enforcement and non-law enforcement, were convicted of federal civil rights charges.[10]

Section 242 Requires a Specific Intent to Violate the Victim's Rights, Which Can Be Proved in the Ninth Circuit by Reckless Disregard.

The United States Attorney's Office for the District of Idaho has concurrent authority with the Civil Rights Division (both Department of Justice components) to prosecute Section 242 violations in Idaho. The bar for such prosecutions is high. Prosecutors must prove that the person acting under color of law intentionally used more force than was necessary under the circumstances, and, as in civil lawsuits brought under 42 U.S.C. § 1983, case law provides that an evaluation of those circumstances must recognize that law enforcement officers often must make use of force decisions in mere seconds in rapidly evolving situations.[11] Law enforcement decision-making is typically given great deference by courts and juries.

I spent the first nearly five years (1992-1997) of my practicing lawyer career as a trial attorney in the U.S. Department of Justice, Civil Rights Division, Criminal Section, and reviewed hundreds of FBI color of law investigations. At the time, although the legal threshold to charge a case was high in recognition of what was required to prove a Section 242 violation, the investigative threshold was low. If the FBI received a complaint where the facts, if true, would make out a violation of the statute, the FBI would investigate. Rarely did even thorough investigation of those complaints achieve that high evidentiary threshold to move forward, however. U.S. Department of Justice guidelines require that before seeking an indictment, a prosecutor must reasonably believe that she has sufficient evidence that will be admissible in court to obtain and sustain a conviction.[12] Of course, to obtain a conviction, a prosecutor must prove the charges beyond a reasonable doubt, the highest standard in our legal system.

Section 242's *mens rea* element poses a significant evidentiary burden on prosecutors, meaning that only the strongest, and often most egregious, cases get prosecuted. In *Screws v. United States,* 325 U.S. 91 (1945), the Supreme Court held that "willfully" meant that the statute was violated only where the defendant had the specific intent to deprive the victim of her constitutional or statutory rights.[13] The Supreme Court has not since revisited the meaning of "willfully" in Section 242, and the circuit courts have described the standard in slightly different terms.

In the Ninth Circuit, a defendant does not need to be thinking in constitutional terms. Reckless disregard for a person's constitutional rights that have been made specific and definite is sufficient to prove that a defendant acted willfully.[14] Understandably then, when a law enforcement encounter is rapidly evolving, and officers and agents are making split-second decisions, proving an officer or agent intentionally used more force than was necessary is difficult.

In situations where law enforcement officers and agents have clear custody and control of a detainee, or are choosing how to make an arrest in the first instance, and deliberately use more force than is necessary under the circumstances, a culpable *mens rea* is easier to prove. *Otherson* illustrates exactly this. The victims already were in custody and under control, and no evidence shows they posed any threat to the border patrol agents. The defendants' intent to violate the constitutional rights of their victims was clear. They assaulted their detainees with the intent of punishing them, an abuse of their authority.[15]

Otherson was decided by the Ninth Circuit only 14 years after the Supreme Court's decision in *Price*. Together they make clear that federal, state, and any private actors acting in concert with them, violate federal criminal law when they intentionally deprive a person of constitutional rights. *Otherson's* concluding paragraph provides a clear statement of Section 242's important role in preserving those constitutional guarantees: "The message of this case is clear. So long as the American flag flies over United States courthouses, the federal courts and the federal justice system stand as bulwarks to assure that every human being within the jurisdiction of the United States shall be treated humanely and dealt with in accordance with due process of law by those entrusted with the power to enforce the law."[16]

The District of Idaho has a history of strong civil rights enforcement, regardless of administration. Its fidelity to ensuring thorough investigation and prosecution, where appropriate, of Section 242 violations will promote respect for the rule of law and make easier the job of the vast majority of law enforcement officers who do not abuse the power they have and who understand and stay within the limits of their authority.

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Endnotes

1. *United States v. Otherson*, 637 F.2d 1276, 1277-78 (9th Cir. 1980).

2. *United States v. Daniels*, 281 F.3d 168, 178-79 (5th Cir. 2002).

3. *United States v. Reese*, 2 F.3d 870, 887-90 (9th Cir. 1993) (officials charged with violating victim's right to be kept free from harm while in custody).

4. *Otherson*, 637 F.2d. at 1276.

5. *Id.*, at 1278 (quoting *Screws v. United States*, 325 U.S. 91, 108 (1945). In *Screws*, Justice William O. Douglas wrote that for purposes of § 242, "[h]e who acts under "color" of law may be a federal officer or a state officer." *Screws*, 325 U.S. at 108.

6. *Id.* at 1279-84. At the time, § 242 prohibited a person acting under color of law from depriving any "inhabitant" of the United States of their constitutional rights. Amendments in 1994 substituted "any person in any State . . ." for "any inhabitant of any State . . ." Pub. L. 103-322, § 320201(b).

7. 383 U.S. 787 (1966).

8. *United States v. Price*, 383 U.S. 787, 794 (1966).

9. *Id.* at 790.

10. The defendants in *Price* also were charged with violating 18 U.S.C. § 241, a civil rights conspiracy statute also passed after the Civil War as part of the Enforcement Acts of 1870 and 1871, known colloquially as the Ku Klux Klan Acts. Section 241's plain language makes clear that it targeted members of the Ku Klux Klan, and similar groups, who wore masks when carrying out assaults on black residents, primarily in the south, and often in groups of law enforcement and non-law enforcement. Section 241 provides that "If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; . . shall be fined under this title or imprisoned for not more than ten years . . ."

11. *See, e.g., Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

12. Justice Manual, § 9-27.220, *Comment*.

13. *Screws*, 325 U.S. at 101, 106.

14. *United State v. Gwaltney*, 790 F.2d 1378, 1386 (9th Cir. 1386) (citing *United States v. Ellis*, 595 F.2d 154, 161-62 (3d Cir. 1979); see also *Reese*, 2 F.3d at 881. For a recent discussion of the different "willfully" standards employed in federal circuit courts, see Aneri Shah, *Reinvigorating the Federal Government's Role in Civil Rights Enforcement Under 18 U.S.C. § 242: The George Floyd Justice in Policing Act's Not So Reckless Proposal*, 52 Seton Hall L. Rev. 1601 (2022).

15. Increasingly, that evidence is provided through bystander video, and prosecutors need rely less on law enforcement witnesses testifying against their colleagues.

16. *Otherson*, 637 F.2d at 1285.

2025 Annual Meeting and Anniversary Gala Recap

Teresa A. Baker

The Idaho State Bar celebrated its 100th Anniversary in conjunction with the 50th Anniversary of the Idaho Law Foundation in Boise at Jack's Urban Meeting Place ("JUMP") in July 2025.

The celebration began with a leadership social on Tuesday, July 15th with members of the ISB Board of Commissioners, the ILF Board of Directors, officers of the District Bar Associations and Practice Sections in attendance. The social was held in the offices of Stoel Rives, LLP on the 19th floor overlooking beautiful downtown Boise.

The following day, Wednesday, July 16th began with a noon luncheon and the Idaho Law Foundation ("ILF") Annual Meeting led by the ILF President Sunrise Ayers of Boise. The election of new board members was held with Michelle Crist-Aguiar, and Lynette M. Davis, both of Boise, Corey J. Smith of Coeur d'Alene and Carole Wesenberg of Pocatello elected for three-year terms. Outgoing Board member and Past President Fonda L. Jovick of Sandpoint was honored for her nine years of service.

At this luncheon, the Future Fund campaign was launched. With 2025 marking the 50th Anniversary of the Idaho Law Foundation, this campaign is an opportunity to make plans for future Idahoans through the Idaho Law Foundation's Endowment Fund, providing sustainable, long-term funding for Foundation programs, positively impacting our community in the areas of civic education and access to justice. The Future Fund campaign's goal is to increase the Endowment from nearly $650,000 to $1,000,000 by the end of 2025. Pledges are designed to spread financial commitment from donors throughout the next five years.[1]

Idaho Volunteer Lawyers Program volunteer Abigail Schultz of Boise, spoke about the impact that her volunteer work has had on her and her clients. Additionally, Samara Coleman, a four-year high school mock trial participant and recipient of the Top 10 Attorney Award at the 2025 National High School Mock Trial Championship, talked to the attendees about the influence the program has on students as she heads toward college.

The Idaho State Bar and Idaho Law Foundation Service Awards were then presented to attorneys and non-attorneys from around the Gem State who have provided volunteer time to support the work of the Bar and the Law Foundation. Those honored include Diane K. Minnich, retired executive director of the ISB/ILF, the Honorable Debora K. Grasham, Taylor Mossman-Fletcher, William K. Fletcher, and Kenneth C. Howell, all of Boise, Fonda L. Jovich of Sandpoint, and Amanda E. Ulrich of Idaho Falls. The Section of the Year Award was then presented

to the members of the Idaho Legal History Section for their work and financial contributions to support the publishing of *Tents to Towers: The History of the Practice of Law in Idaho*. Section Chair Christopher P. Graham and other members of the section present accepted the award. The luncheon concluded with Maureen Ryan Braley, Executive Director, thanking the ISB/ILF staff in attendance for their service to the profession and their work on the anniversary programs and events.

Next, two one-hour legal history CLEs were presented by Chris Graham, Judge Jessica M. Lorello, and Kolby K. Reddish, all of Boise. Their presentations explored notorious cases and appeals in Idaho legal history. Each CLE was attended by over 110 attorneys in person and via webcast.

The highly anticipated Anniversary Gala kicked off that evening with a 1920s speakeasy themed cocktail hour, including jazz music from the Frim Fram Four, festive drinks in commemorative engraved glasses and decorations that took attendees back to the glamour of the Gatsby era. Attendees joined in the festivities by donning their best 1920s attire with beads, sequins, tails, gloves and feathers.

The program for this special evening began with President Mary V. York of Boise, and immediate past President Jillian H. Caires of Coeur d'Alene, acting as mistresses of ceremony. A champagne toast was given by President York congratulating the members on the past and future of the legal profession in Idaho. They then introduced the other ISB commissioners, the ILF Board of Directors, the Anniversary Committee, the evening's honorees, and the other dignitaries. They also introduced and thanked the many anniversary sponsors whose financial contributions made the gala possible. Lastly, they thanked Idaho artist Dan Looney for his donation of a painting entitled "Idaho Law: The Beginning." The limited edition signed prints of painting are available for purchase with proceeds benefitting the Foundation. Congratulatory remarks were given by Chief Justice G. Richard Bevan of the Idaho Supreme Court. Dinner, styled from the 1920s era, was then served to the over 260 guests in attendance.

After dinner, the keynote address "*Tents to Towers: Bringing Idaho's Legal History to Life*" was given by Judge Grasham. She walked attendees through the past century through colorful stories and pictures of Idaho's attorneys, judges and litigants. These stories and more were all captured in the newly published book "*Tents to Towers: The History of the Practice of Law in Idaho.*" Copies of this book are available for purchase with proceeds also benefiting the Foundation.[2]

After the presentation, ILF Past President Jovick was invited to the stage to introduce the Foundation's Future Fund to the audience. A short video of volunteers from the Foundation's various programs was played detailing the impact of the Foundation's programs have on Idaho communities. Ms. Jovick then solicited donations to the Future Fund from the audience. Throughout the day's events there was over $80,000 pledged to the Future Fund by attendees. This is the largest amount of money pledged to the Law Foundation in a single day in its 50-year history.

Next, the evening's awards were presented. The 2025 Outstanding Young Lawyer Award was presented to Alexandra Hodson of Boise, and the 2025 Distinguished Lawyer Awards were presented to Charles A. Homer of Idaho Falls and Tim Gresback of Moscow. Each award recipient was introduced with a short video of an interview by a colleague or friend and then each graciously accepted their award at the podium and introduced their families and friends in attendance.

The celebration closed with the passing of the gavel to the new Idaho State Bar President Kristin Bjorkman of Boise, and more jazz music as attendees said their goodbyes.

The Anniversary Gala and other anniversary events throughout the rest of 2025 would not be possible without the support of our very generous sponsors. The sponsors include the Fourth District Bar as the platinum sponsor, the University of Idaho College of Law, Holland & Hart, Parsons Behle & Latimer and Hawley Troxell as gold sponsors and silver sponsors River's Edge Mediation, Stoel Rives LLP, Brassey Crawford, Johnson May and the Idaho Community Foundation.

Teresa A. Baker *is a member of the Idaho State Bar. After practicing law for 20 years, she decided to serve her fellow attorneys and currently is the Program and Legal Education Director for the Idaho State Bar and Idaho Law Foundation.*

Endnotes

1. https://ilf.idaho.gov/future-fund/.
2. https://isb.idaho.gov/anniversary/.

1980

–1981–
Sanda Day O'Connor becomes the first woman on the U.S. Supreme Court

–1980–
The population of Idaho is over 944,000 people

–1982–
The Idaho Court of Appeals beings operation

THE IDAHO STATE BAR & IDAHO LAW FOUNDATION

The 1980s

The Era of Modernization Begins

Christopher P. Graham

In her concluding remarks on the history of the Idaho State Bar in the 1970s, Judge Jessica Lorello fittingly told us to "[s]tay tuned for the 1980s." I say fittingly because, as we know, the 1980s saw the beginning of heavy metal and hair bands and (thankfully, some might say) the end of disco. Copious amounts of Aqua Net and lengthy guitar solos aside, the 1980s also saw the Idaho State Bar enter the age of modernization.

Students at the University of Idaho working in the computer lab in 1984. Photo credit: University of Idaho Library Digital Collections, [Argonaut Photograph Collection, PG52-245].

THE BEGINNING OF THE DIGITAL AGE

Thankfully, having survived the great "Letter Size v. Legal Size" controversy of the 1970s (or perhaps because of it), Idaho attorneys were primed for the next technological advancement using letter sized paper: the facsimile. By all accounts, being able to quickly transmit letters and documents in seconds, as opposed to using the U.S. Mail, was a game changer for attorneys. But something even greater for the practice of law was just on the horizon, as the 1980s saw the development and use of the personal computer. Adding to that was the was the invention of the "LAN" or Local Area Network, which allowed law firms to start internally sharing documents and printers and, arguably the ultimate game changer of them all: electronic mail. In a 1985 article in *The Advocate* entitled "Lawyers Say 'Hi' to High-Tech," Idaho attorney and executive director and chief operating officer of the American Bar Association Thomas H. Gonser sounds a bit like Nostradamus, remarking that electronic mail "unlocks the door to the immense amount of information gathering and information transfer that truly responds to the lawyer's everyday needs."[1] Given the amount of electronic mail I receive daily, I both agree and disagree with his sentiment.

Lawyers Say 'Hi' to High-Tech

By Thomas H. Gonser

The author, an Idaho attorney, is executive director and chief operating officer of the American Bar Association. This article is adapted from his keynote address in November at the Legal Tech Conference in Chicago, which was coordinated by Price Waterhouse.

Reprinted with permission of Bar Leader, a publication of the American Bar Association, from the March-April 1986 issue.

Legal technology no longer is a future topic. It's now. It's no longer an Orwellian prediction. It's a reality.

To remain competitive, it's essential that lawyers take advantage of the technology available today. Perhaps less obvious - but even more important - is that we must begin now to develop new technology to meet our future needs.

The profession's experience with technology has been characterized by a fairly natural progression from the very simplest applications, such as word processing, to more complex uses. The reluctance of lawyers to experiment with different forms of technology increases with their need to develop a more "hands-on" approach to computers.

A recent article in the *Wall Street Journal* surveying chief executive officers of larger corporations about their personal use of computers showed that only a few had computer terminals on their desks. The other said having terminals created a negative impression - that a successful executive should not be doing his or her own typing. Many lawyers share this reluctance.

How it started

The evolution of technology within the profession began with word processing. For most law firms, it represented their first exposure to modern technology. Firms bought into it quickly, probably because the benefits were so obvious and because secretaries, not lawyers themselves, worked at the terminals.

The future soon brought computer-assisted legal research in the form of LEXIS and WESTLAW. Unlike word processing, computer-assisted legal research is most efficient when lawyers "interact" with the terminals. Although the introduction of LEXIS and WESTLAW met with some resistance, law offices now frequently include at least one LEXIS or WESTLAW terminal.

About the same time lawyers were being exposed to computer-assisted legal research, many were beginning to use computers for accounting and billing. These data processing systems already existed in other business organizations, so were easily adapted to law offices. But for the most part, responsibility for managing the computer operations was delegated to office managers, accountants and other nonlawyers. Lawyers still did not have to develop "hands-on" expertise with the terminal nor acquire even a limited understanding of the software packages that supported the systems.

Computer-assisted litigation-support systems represent the first technological development that required a lawyer to have some understanding of the underlying technology. These systems help control and manage the large volume of documents often associated with complex litigation. They require lawyers to deal with computer hardware as well as develop a basic understanding of various software options. Because computerized litigation-support systems must be designed to meet the unique needs of a particular piece of litigation, the lawyer responsible for the suit must help choose an appropriate software package. He or she also should have a working knowledge of the computer terminal that will be used to call up the documents or categories of documents.

Electronic mail a boon

Perhaps the most misunderstood computer application and, paradoxically, the easiest to master, is electronic communications. This is the application that unlocks the door to the immense amount of information gathering and information transfer that truly responds to the lawyer's everyday needs.

Lawyers must have easy access to an incredible amount of information. Lawyers also spend an inordinate amount of time communicating with other people - clients, colleagues, opposing lawyers, judges and many others. The use of telecommunications can significantly reduce the time it takes to perform both of these functions, thereby freeing more of the lawyer's time for tasks that require his or her special skills and judgment.

Reduced to its simplest terms, a computer telecommunications system is a computer terminal with a modem that allows you to send and receive written messages and documents from other computer users using telephone lines. The cost of transferring a document electronically is much less than Federal Express or other overnight services. It's also faster, permitting almost instantaneous transmission. It can be used to access information data bases such as news wires, stock price information, legal publications and many other sources of information needed daily.

Other applications of technology are in the experimental stages but surely will play a big role soon. In the near term, I see increased use of what I call "Computer-Assisted Legal Analysis" (CALA). While much of the work in this area is in the experimental stages, some products already are in use in prototype situations. These are in effect computer models, designed to assist lawyers in legal decision-making. They don't replace lawyer judgment; they complement it.

One early example of a CALA model was developed while I was associate general counsel at Boise Cascade Corp. It is called INVALUE.

An article by Thomas H. Gonser published in The Advocate *July 1986 discussing the benefits of technology for the law practice.*

–1983–
Hon. Deborah Bail becomes the first female judge appointed in Idaho

–1983–
The internet was created

–1986–
Kaye O'Riordan becomes the first woman to serve on the ISB Board of Commissioners

–1989–
The Berlin wall falls

–1989–
The World Wide Web is invented

1990

The Idaho State Bar got in on the action beginning in 1985, reviewing information and reports for "potential options of vendors and uses of computerization of membership records, accounting records and as many facets as possible of Bar office activity."[2] The cost was significant, $80,000, so much so that the Idaho State Bar actually took out a four year loan in order to help pay off the equipment. On October 11, 1985, the Board of Commissioners adopted a Resolution to purchase the computer system "to meet the recordkeeping, word processing, and accounting needs of the Idaho State Bar to fulfill its duties...."[3] By the end of the decade, most attorneys and law firms in the state had some type of computerized system.

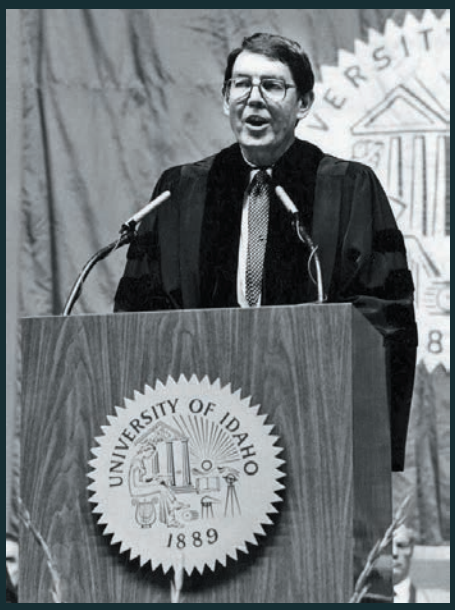
CREATION OF THE IDAHO COURT OF APPEALS

In 1980, the Idaho Legislature passed the "Idaho Court of Appeals Act," forming the Idaho Court of Appeals.[4] The Court of Appeals was created to alleviate the significant backlog of appellate cases that had developed at the Idaho Supreme Court as a result of Idaho's rapid population growth in the 1970s. At one point, Idaho had the unflattering distinction of having the longest reported delay in processing appeals of any U.S. state.[5] The Court of Appeals, consisting of a Chief Judge and two Associate Judges, officially opened its doors in 1982. The first judges appointed to the new Court were Jesse R. Walters (Chief Judge), Donald R. Burnett, and Roger Swanstrom. On its first day of operation, the Idaho Supreme Court assigned the Court of Appeals a whopping 206 appeals. Within three years, the Court of Appels helped to reduce the average length of time it took to process appeals in Idaho by ten months.[6]

THE IDAHO RULES OF EVIDENCE TAKE SHAPE

The lack of formality in the rules of evidence also resulted in a lack of consistency for Idaho attorneys. Indeed, as late as the 1960s, attorneys were still using (and having sustained) general objections such as "irrelevant, immaterial, and incompetent."[7] To help combat the problem, beginning in 1980, the Idaho State Bar Commissioners appointed the Idaho State Bar Evidence Committee. The Committee, chaired by Merlyn W. Clark and consisting of numerous members of Idaho's bench and bar, commenced deliberations on February 9, 1980. The Committee eventually met 23 times over a three-year period and on December 16, 1983, produced a proposed set of the Idaho Rules of Evidence for commentary from a wide-ranging group of public and private individuals and groups including all three branches of Idaho's government. The Committee then took the various comments it received and made revisions "to accommodate suggestions and criticisms of the tentative draft." On August 20, 1984, the Committee submitted its final report and draft to the Idaho Supreme Court. After a few more alterations by the Idaho Supreme

The original members of the Idaho Court of Appeals pictured in 1982: (left to right) Judge Roger Swanstrom, Chief Judge Jesse Walters and Judge Donald R. Burnett. Courtesy of the Idaho Judicial Branch.



Governor John Evans speaking at the University of Idaho 1981 commencement. Evans was governor of Idaho from 1977 to 1987. Photo credit: University of Idaho Library Digital Collections, [Argonaut Photograph Collection, PG52-452].

Court, the Court officially entered an Order on January 8, 1985, officially adopting and implementing the Idaho Rules of Evidence effective July 1, 1985.[8]

THE GREAT ADVERTISING DEBATE(S)

In 1977, the U.S. Supreme Court ruled in *Bates v. State Bar of Arizona* that commercial advertising by attorneys was protected speech under the First Amendment.[9] Meeting minutes of the Idaho State Bar Commissioners throughout the 1980s reflect that the Commissioners struggled with what could (or should) be allowed insofar telephone directory advertising,[10] advertising in a city in which an attorney had no office,[11] and how do deal with the issue of when a local law firm (Langroise & Sullivan) merged with a firm from another state (Holland & Hart).[12] Although it seems a bit odd to think about the Bar Commissioners' consternation in light of the modern day internet,[13] there is no question that a good deal of effort and were spent on navigating with the technological advances in how attorneys conducted their business.

Front and 8th Streets in 1989. The Warehouse building still stands on 8th Street today in Boise. Photo credit: Idaho State Archives, [Leo J. "Scoop" Leeburn, P2006-20-01150-7].

A SERIES OF NOTABLE "FIRSTS" FOR WOMEN

The 1980s also marked a number of notable "firsts" for women in Idaho legal history. On April 18, 1983, Deborah Ann Bail took the oath of office and became Idaho's first female district court judge.[14] Judge Bail served as a district court judge in Ada County for nearly 40 years, taking senior judge status in 2021. That same year, Joanne P. Rodriquez became the first Hispanic woman to be admitted to the Idaho State Bar.[15] In 2022, Rodriguez retired from a distinguished career with the U.S. Attorney's office in Idaho, where she mentored numerous Idaho Assistant U.S. Attorneys.[16]

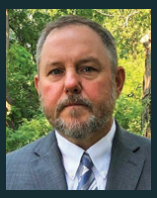
In 1986, Kaye O'Riordan became the first woman to serve on the Idaho State Bar Board of Commissioners.[17] Two years later, O'Riordan would become Idaho's first woman to serve as President of the Idaho State Bar. Also in 1986, Ida Leggett, who would later be appointed as Idaho's first African American jurist, became Idaho's first African American woman lawyer.[18] That same year, Merrily Munther became the first female President of the Idaho Law Foundation.[19]

Ida Leggett.

Hon. Deborah A. Bail.

CONCLUSION

Just as Prince sang in (arguably) the greatest rock power ballad of the 1980s ("Honey, I know, I know the times are changing.... It's time we all reach out for something new"), the 1980s saw change take place for the Idaho State Bar and its members—change that was rapid, meaningful, and in many cases long overdue. And equally significant, the 1980's also set the stage for what would come next. No, not just the grunge era; rather, the 1980s set the stage for the ever-increasing pace and modernization that in large part defines our modern-day practice of law. But, like even the best of guitar solos, the 1980s had to come to an end. So, bring on the 1990s!



Chris Graham *was born in Washington D.C. In 1973, before he was a year old, his parents moved to Idaho, where Chris' dad had been a smokejumper in the 1950s and 60s. The family settled in New Plymouth, buying a farm. Chris graduated from New Plymouth High School in 1991. He attended Boise State University, graduating in 1995 with a B.A. in History. Chris later attended the University of Idaho College of Law, graduating* cum laude *in 2000, where he also served as Editor-in-Chief of the Idaho Law Review.*

Following graduation, Chris clerked for Idaho Supreme Court Justice Jesse R. Walters. He is currently a partner at Brassey Crawford, PLLC, where he maintains an active civil trial and alternative dispute resolution practice. Chris is the current Chairperson of the Idaho Legal History Section.

ENDNOTES

1. Thomas H. Gonser, Lawyers Say 'Hi' to High-Tech, 29 (7) Advocate 11 (1986).

2. Idaho State Bar Board of Commissioner Meeting Minutes, June 11-12, 1985. One of the many things I enjoy about doing historical research is that you never know for certain what you may uncover. Sometimes the information is maddening. Sometimes it is perplexing. Sometimes it is humorous. Sometimes it is a mix of all of these things. And sometimes you find a nugget of great personal interest. Such is the case when I was researching the Board of Commissioner Meeting Minutes for the 1980s and discovered that, as part of its investigation into the benefits of computerization, the Idaho State Bar hired my father-in-law, Gary Scarlett (who owned a computer consulting business), to provide an axillary study.

3. Idaho State Bar Board of Commissioner Meeting Minutes, October 11, 1985.

4. Idaho Code § 1-2401 *et. seq.*

5. *See* Carl F. Bianchi, "The 1980s: Common Threads," in *Justice for the Times*, ed. Carl F. Bianchi, 216-17 (Boise: Idaho Law Foundation, Inc. 1990).

6. Report to Governor C.L. "Butch" Otter and the 2nd Regular Session of the 62nd Idaho Legislature (*available at* https://isc.idaho.gov/annuals/2013/2013-CourtOfAppeals.pdf).

7. John Rumel and Tim Gresback, *"Avoid These Eleven Common Evidentiary Mistakes,"* 60(10) Advocate 37 (2017).

8. Idaho Supreme Court Order Adopting Idaho Rules of Evidence, January 8, 1985.

9. 433 U.S. 350 (1977).

10. The Idaho State Board of Commissioner Meeting Minutes for January 11, 1980 reflect significant discussion took place with regard to whether lawyer advertising should take place in the Mountain Bell telephone directory, what type of advertising would be permissible (and what type of advertising would not).

11. *Id.*

12. Idaho State Bar Board of Commissioners Meeting Minutes, Dec. 6, 1984.

13. This seems especially true considering that nearly every attorney and/or firm in Idaho now has a website that "promotes" the attorney/firm's supreme skill and legal prowess. For example, while my own law firm's website describes our firm as having "Idaho's Preeminent Civil Trial Attorneys," the attorneys at Duke Evett, PLLC, whose firm website refers to the firm as "Idaho's Premier Trial Team," may respectfully disagree.

14. *See* Debora Kristensen Grasham, "*The First Women of Idaho's Bench and Bar,*" *Western Legal History*, Vol. 32, No. 1, 96-97 (*available at* https://njchs.org/current-issues/).

15. *Id.* at 117.

16. Press Release "U.S. Attorney Hurwitt Appoints Leadership Team," Sept. 6, 2022.

17. *See* Grasham at 125.

18. *See "Ida Leggett: First African American Woman Admitted to the Idaho Bar,"* Idaho Legal History Newsletter, Spring 2017, at 3.

19. *See* Grasham at 125.

ACCESS TO JUSTICE

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OFFICIAL NOTICE
SUPREME COURT OF IDAHO

Chief Justice
G. Richard Bevan

Justices
Robyn M. Brody
Gregory W. Moeller
Colleen D. Zahn
Cynthia K.C. Meyer

Regular Fall Term for 2025
2nd Amended March 25, 2025

Boise	August 18, 20, 22 and 25
Boise	September 10 and 12
Coeur d' Alene	September 17 and 18
Boise	October 1, 3 and 6
Blackfoot	October 8
Idaho State University (Pocatello)	October 9
Boise	November 3, 7 and 10
Twin Falls	November 5

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2025 Fall Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

OFFICIAL NOTICE
COURT OF APPEALS OF IDAHO

Chief Justice
David W. Gratton

Judges
Molly J. Huskey
Jessica M. Lorello
Michael P. Tribe

Regular Fall Term for 2025
04/07/2025

Boise	August 5, 12, 14 and 26
Boise	September 11, 16, 18 and 23
Boise	October 7 and 9
Boise	November 6, 13, 18 and 20
Boise	December 9

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2025 Fall Term for Court of Appeals of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

OFFICIAL NOTICE
SUPREME COURT OF IDAHO

Chief Justice
G. Richard Bevan

Justices
Robyn M. Brody
Gregory W. Moeller
Colleen D. Zahn
Cynthia K.C. Meyer

Regular Spring Term for 2026

Boise	January 5, 7, 9 and 14
Boise	February 9, 13, 18 and 20
Boise (University of Idaho)	February 11
Boise	April 6, 15 and 17
Moscow (University of Idaho)	April 8
Lewiston	April 9
Boise	May 6, 8, 11, 13 and 15
Boise	June 3, 5 and 8
Rexburg (BYU Idaho)	June 10
Twin Falls	June 11

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2026 Spring Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

Idaho Supreme Court
Oral Arguments for September 2025

08/12/2025

Wednesday, September 10, 2025 - Boise
8:50 a.m. *State v. Fierro-Garcia* ..... #50530
10:00 a.m. *Estate of Weeks v. Oneida County* ..... #52031
11:10 a.m. *Coronado v. City of Boise* ..... #51722

Friday, September 12, 2025 - Boise
8:50 a.m. *State v. Borek* ..... #51548

Wednesday, September 17, 2025 - Coeur d'Alene
8:50 a.m. *Nelson v. Wylie* ..... #52008
10:00 a.m. *Acorn Investments v. Elsaesser* ..... #52007
11:10 a.m. *McLaughlin v. Moore* ..... #51858

Thursday, September 18, 2025 - Coeur d'Alene
8:50 a.m. *Khalsa v. Ridnour* ..... #52009
10:00 a.m. *Beardslee v. Ratliff Family* ..... #51543

Idaho Court of Appeals
Oral Arguments for September 2025

08/12/2025

September 11, 2025
9:00 a.m. *State v. Michaelson* ..... #51772
10:30 a.m. *Burnett v. Price* ..... #52945

September 16, 2025 (via Zoom)
9:00 a.m. *R.C. Worst v. Williams* ..... #51898
10:30 a.m. *Bybee v. Loftus* ..... #52222

September 18, 2025
9:00 a.m. *State v. Myers* ..... #51671
10:30 a.m. *Van Stone v. Am. Econ. Ins* ..... #52381

September 23, 2025
9:00 a.m. *Nork v. Taylor* ..... #52415
10:30 a.m. *F&G v. Dotson* ..... #51859

CASES IN ALPHABETICAL ORDER BY CATEGORY – JULY 2025

CIVIL APPEALS

Arbitration
Whether the magistrate court had jurisdiction to enforce the parties' arbitration agreement and refer the divorce action to binding arbitration when I.C. § 32-715 vests "[e]xclusive original jurisdiction" of divorce actions with the magistrate court.

Miller v. Miller
Docket No. 52616
Supreme Court

Attorney Fees
Whether Defendant who successfully moved to have the unlawful detainer action dismissed was the prevailing party for the purpose of determining his entitlement to an attorney fee award.

Clark v. Conger
Docket No. 52590
Court of Appeals

Capital Post-Conviction
Whether the Idaho Supreme Court should recognize an actual innocence exception to the statutory 42-day time limitation for filing a capital post-conviction appeal.

Abdullah v. State
Docket No. 52130
Supreme Court

Easements
Whether the district court erred in concluding that Plaintiff failed to prove all the elements of a prescriptive easement and finding Plaintiff was not entitled to a presumption of adverse use during the prescriptive period.

Spirit Lake Cabins, LLC v. Inland Empire Paper Co.
Docket No. 52190
Supreme Court

Whether Defendants' pleadings and affidavits created genuine issues of material fact precluding summary judgment on Plaintiff's claim for an easement implied by historic use.

Crystal Homestead Estates, LLC v. Schiffman
Docket No. 52561
Supreme Court

Idaho Public Records Act
Whether the district court misapplied the Idaho Public Records Act by characterizing the requested police report as an investigatory record and refusing to separate exempt from non-exempt material in the police report.

Gaylord v. King
Docket No. 52763
Court of Appeals

Post-Conviction
Whether *Strickland* prejudice is established when a post-conviction petitioner alleging trial counsel was ineffective for not filing an Idaho Criminal Rule 35(b) motion shows he would have asked counsel to file a Rule 35 motion had counsel consulted with him.

Falk v. State
Docket No. 52043
Court of Appeals

Summary Judgment
Whether the district court erred by concluding there were no genuine issues of material fact as to whether Plaintiff suffered a mental disability such that the applicable statutes of limitation were tolled pursuant I.C. § 5-230(2).

Miskin v. Morrell
Docket No. 52413
Court of Appeals

Whether the district court erred in concluding as a matter of law that Defendants owed no affirmative duty to protect their employee from the tortious conduct of an individual with known mental health issues and violent tendencies.

Spears v. Antelope Mountain Resort, LLC
Docket No. 52406
Supreme Court

CRIMINAL APPEALS

Due Process
Whether the inclusion of the language "or any other lewd or lascivious act" in the jury instructions created a fatal variance between the instructions and the charging document, which alleged sexual battery by means of manual to genital contact.

State v. Jim
Docket No. 51932
Court of Appeals

Evidence
Whether the district court abused its discretion by ruling that Defendant opened the door to otherwise inadmissible evidence, admitting a detective's undisclosed expert opinions on stalking behaviors, excluding Defendant's extrinsic impeachment evidence, and admitting an uncertified copy of a civil protection order.

State v. Hilts
Docket No. 51485
Court of Appeals

Guilty Pleas
Whether the district court abused its discretion in finding Defendant's mistaken belief that his plea agreement contemplated the dismissal of charges in another county did not constitute a just reason for withdrawal of Defendant's guilty plea.

State v. Ybarra
Docket No. 51777
Court of Appeals

Motion for Mistrial
Whether the district court committed reversible error when it denied Defendant's motion for a mistrial after an officer testified that Defendant was the subject of a "felony stop."

State v. Allan
Docket No. 51731
Court of Appeals

Motion to Suppress
Whether the evidence discovered during a search of Defendant's person incident to his arrest should have been suppressed because the arrest was not supported by probable cause.

State v. May
Docket No. 51204
Court of Appeals

Whether the district court erred in concluding that the officers were not qualified to identify the odor of burned fentanyl pills and therefore their detection of the odor did not give rise to probable cause to search Defendant's vehicle.

State v. Grounds
Docket No. 51541
Court of Appeals

Restitution
Whether the district court abused its discretion when it ordered Defendant to pay over $7,000 in restitution without considering Defendant's financial resources, needs, and earning ability.

State v. Burns
Docket No. 51773
Court of Appeals

Sentence Review
Whether the standard of review governing review of a juvenile sentence should be different than the standard governing review of an adult sentence because I.C. § 20-520 sets forth the exclusive factors governing juvenile sentencing.

State v. Doe (2024-29)
Docket No. 51814
Supreme Court

Whether the district court erred by imposing a separate, concurrent determinate five-year sentence for use of a firearm in the commission of the underlying offense.

State v. Wall
Docket No. 51843
Court of Appeals

Statutory Interpretation
Whether Defendant who was still serving a sentence for forgery was "convicted of a felony" for purposes of I.C § 18-3316, even though forgery is not one of the crimes enumerated in I.C. § 18-310.

State v. Slinkard
Docket No. 52113
Supreme Court

Whether the district court exceeded its authority under I.C. § 19-5307 when it ordered Defendant to pay a $5,000 civil penalty on each of his two felony convictions, both of which involved the same victim.

State v. Smith
Docket No. 51871
Court of Appeals

Whether I.C. § 18-8004(2) barred Defendant's prosecution for driving under the influence because one of Defendant's four breath samples registered a breath alcohol concentration of less than 0.08.

State v. Black
Docket No. 51663
Court of Appeals

Sufficiency of Evidence
Whether the State failed to prove that the crystalline substance Defendant possessed was the same crystalline substance that tested positive for methamphetamine.

State v. Studer
Docket No. 51808
Court of Appeals

Whether the district court erred by denying Defendant's motions for judgment of acquittal where the State failed to present sufficient evidence to prove that Defendant overcame the victim's resistance with extrinsic force or violence.

State v. Schossberger
Docket No. 52319
Court of Appeals

ADMINISTRATIVE APPEALS

Attorney Discipline
Whether Petitioner demonstrated by clear and convincing evidence that he meets the requirements for reinstatement to the practice of law in Idaho.

Idaho State Bar v. Webb
Docket No. 49494
Supreme Court

Summarized by:
Lori Fleming
Supreme Court Staff Attorney
(208) 334-2246

Steven K. Brown
1955 – 2025

Steven Keith Brown died peacefully at home on May 16, 2025. Steve was a caring son, husband, brother, father, and grandfather and was loved in turn by all who knew him. He was a skilled and compassionate lawyer, a voracious reader, and enthusiastic in his pursuit of knowledge. He was an avid outdoorsman, who championed rivers and the natural world.

Born in Boise, Idaho, on January 25, 1955, to Keith and Carlene Brown, Steve was the oldest of five sons. He was raised in Idaho Falls but grew up in the wild places of Idaho. From fishing and camping with his grandparents as a young boy, to working in forestry and river guiding as a young man, it was in the backcountry that he felt most at ease.

Steve received his bachelor's degree in forestry from the University of Idaho in Moscow, where he met and fell in love with Virginia "Ginny" Gale. In 1981 they eloped to Bonner's Ferry and soon after began their family. First, their son Nathan was born, and their daughter Jessica followed two years later. In 1985 he completed his law degree in Moscow, was admitted to the Idaho State Bar, then returned to Idaho Falls to begin his legal career with Hopkins Roden Attorneys. He became a partner and remained with the firm for forty years until his death.

Attorney by trade, oarsman at heart, Steve continued rafting rivers and seeking out other wonders of the natural world. He loved sharing these places and pursuits with his family, friends and colleagues. Closest to his heart was the Middle Fork of the Salmon River, which he would navigate more than 80 times over the course of his life.

Those who knew Steve can speak to the complex and sometimes contradictory nature of his being. A large man with a booming voice, he was contemplative and thoughtful, and he chose his words carefully. He spent most of his life in the American West but was well versed in the history and affairs of the world at large. And although he could be quite particular in his own preferences, he rarely hesitated to put the needs of others ahead of his own. Though his passing is a great loss, our lives are richer for having known him.

Steve is survived by his loving wife Ginny, children Nate and Jess (Matt), his granddaughter, mother, and brothers Pat (Annette), Bob (Debbie), and Tom (Raquel), as well as his many nieces and nephews.

William Anthony Park
1934 – 2025

W. Anthony "Tony" Park died peacefully at home on Friday, May 23, 2025. Tony was born on June 4, 1934, to Bill and Thellie Park, in Blackfoot, Idaho. He was the middle child of three. In 1943, the family moved to Boise, settling in the North End where Tony's boyhood was filled with Boy Scouts, Little League, and hanging out at Murray's Drive In.

Tony's dedication to public service was deeply rooted in his parents' devotion to President Franklin D. Roosevelt. He met one of his heroes, Frank Church, at an Idaho Young Democrats convention in Boise in 1954 and was captivated by Church's eloquence and vision—an admiration that would grow into a lifelong friendship.

Tony earned a football scholarship to Boise Junior College, where he earned an associate's degree and played under legendary coach, Lyle Smith. After a brief stint at the University of Idaho in a combined undergraduate and law program, he volunteered for the U.S. Army in 1956. Tony's brief time in law school landed him an unexpected assignment in Philadelphia working alongside military lawyers. Though he doubted his qualifications, his commanding officer told him, "Private Park, if the Army says you're a lawyer, you're a lawyer!" The experience solidified his desire to become one and gained him some maturity.

Following his service, Tony returned to the University of Idaho to finish his degree and attend law school. Tony was admitted to the Idaho State Bar in 1963. In Moscow, he met and married Betsy Taylor and moved to Boise. Their daughter, Susie, was born in 1962; son Adam was born in 1965; daughter Pattie followed in 1968. Tony and Betsy divorced in 1980 but remained good friends.

Tony's electoral career began with a 1964 bid for Ada County Prosecutor. In 1968, Tony chaired Bobby Kennedy's Idaho presidential campaign and served as the state's sole Kennedy delegate at the Democratic National Convention in Chicago. After Kennedy's assassination in June, Tony attended his funeral in New York City and was deeply honored to serve in the rotating honor guard of Kennedy's casket before the funeral.

In 1970, at age 36, Tony was elected Idaho Attorney General ("AG"). As AG, Tony was a progressive force and strong administrator. He created the state's Environmental Protection Division and launched the Consumer Protection program, which established the AG's office as a key defender of Idaho's consumers. Tony remained a central figure in Idaho Democratic politics for decades, chairing the state party, participating in presidential and Senate campaigns, and mentoring many local and state-wide candidates. His public service also extended beyond politics and elected office. He served on several boards, including Radio Free Europe/Radio Liberty, the American Lung Association, and the American Civil Liberties Union of Idaho. He was general counsel and board secretary for the Killebrew-Thompson Memorial Golf Tournament in Sun Valley for 43 years. At the invitation of Bethine Church, he served on the board of the Frank Church Institute at Boise State for many years, including a decade as its chair.

Tony had a lifelong love of theater. In the 1980s and '90s, he took roles in local productions. In 2021, Tony published his memoir, *An Idaho Democrat: A Political Memoir of a Political Life*. Filled with personal stories and insights from his lifetime in Idaho politics, the book makes a lasting contribution to Idaho Democrats, historians, and all who are interested in political history.

Tony had a rare gift for friendship. At parties, he was always quick with a joke or a funny anecdote, his signature laugh booming across the room. His charisma, warmth, and decency earned him admiration and respect across the political spectrum. He formed close bonds with Democrats and Republicans alike, including former AGs and Supreme Court Justices Jim Jones and Wayne Kidwell, and former District Judge Duff McKee, with whom he lunched weekly at Eddie's Diner.

In 1983, Tony married the love of his life, Gail Chaloupka. Together, they shared 43 wonderful years, traveling extensively and socializing with their many friends.

Tony is survived by his beloved wife, daughter Susan Park; son Adam Park and daughter-in-law Cece Gassner; son-in-law Shane Woytko; grandchildren; his dear brother, Lonnie Park (Annette), his nieces and nephews; his former wife Betsy Hall (Kirk). He was preceded in death by his daughter, Pattie Park Woytko; sister Pattie Gillespie; and his parents.

Ronald A. Cordes
1943 – 2025

Dr. Ronald Alan Cordes, a man of boundless curiosity, intellectual brilliance, and adventurous spirit, passed away on May 16, 2025. Ron was born on August 12, 1943, in Rockford, Illinois. His academic prowess led him to Washington University in St. Louis, where he earned a B.S. in chemical engineering, followed by an M.S., Ph.D., and Juris Doctorate from University of California Berkeley's Boalt School of Law.

Honored with prestigious scholarships and national awards from the American Institute of Chemical Engineers, Ron's career was marked by innovation. He served as a scientific advisor to Iran's Department of Environmental Conservation, an attorney, and Vice President of Plasma Quench Technologies, Inc., securing landmark grants. Ron was admitted to the Idaho State Bar in 1980.

Ron's true passion was fly fishing, which took him to the wilds of Rhodesia, Nepal, New Zealand, and beyond. His encounters included battling tigerfish at Lake Kariba, dodging spitting cobras, or sharing moments with a wounded elephant-became legendary. As an editor for *Fly Fisherman Magazine* and *Fly-Fishing Heritage*, and author of *Lake Fishing with a Fly* and the *Cordes/LaFontaine Pocket Guide* series, Ron inspired countless anglers. His article "The Classic Battle" sparked a lifelong friendship with Jay Rowland, who credited Ron with transforming his life through fishing and camaraderie.

Ron's heart belonged to his wife, Betty, whom he married on January 1, 1980. He believed his life's purpose was to care for her through her long battle with illness, a mission he fulfilled with unwavering love. Their Rigby home was a haven where he fed bald eagles and welcomed wildlife like Daisy the Canada goose. Ron's reflections on aging and cancer, shared in his memoir, revealed a spirit that remained forever young, urging his granddaughters to embrace love and adventure.

Ron is survived by his daughters Shae McEntire (Curtis) and Jill Heald (David), five grandchildren, and devoted caretakers Tammy Davis and Debi Waddell, whose compassion sustained him in his final years. His legacy endures in his writings, friendships, and the love he poured into his family.

Matthew S. Echo Hawk
1975 – 2025

Matthew Spencer Echo Hawk was born February 3, 1975, at the University of California Hospital in San Francisco while his dad was studying at Stanford. Matt journeyed to the Spirit World on Sunday, May 25, 2025, at his home in Provo, Utah. He was the fourth of six children born to Larry J. Echo Hawk and Teresa J. Pries Echo Hawk.

Matt grew up in Pocatello, Idaho and later graduated from Centennial High School in Boise. He served a mission in the Guatemala, Quetzaltenango Mission for The Church of Jesus Christ of Latter-day Saints. He earned his B.S. from Brigham Young University and J.D. from the University of Utah School of Law, where he was on the Law Review and graduated with honors. He spent part of his law school education at the University of Oxford in London.

Matt was admitted to the Idaho State Bar in 2004 and his legal career included work as a prosecuting attorney and defense attorney for Ada County in Boise and time with the Echo Hawk law firm in Pocatello. He will be remembered for his work on behalf of Indian tribes including contributions in cases for the Confederated Tribes of the Goshute Reservation and the Shoshone-Bannock Tribes.

Matt was a gentle soul, a humanitarian by heart—always willing to share, help or give to others. He was a master of resourcefulness and creativity, never complaining and full of gratitude and love. He was always curious and loved learning about all people and places in the world he loved.

Matt will be remembered for his keen intellect, quick wit, and great sense of humor. He loved hunting, fishing, camping, hiking, running rivers, his dogs, running, and family time, which often included games. Matt savored and loved all the glories of the Great Creator's world. He enjoyed international travel including time in Europe, China, Mexico, and Southeast Asia. In the recent weeks before his passing Matt spent time in Cambodia with his sisters and nephew, had good times with family members, and went on a fishing trip with his dad to Lake Powell; just the two of them.

Matt was a warrior and took the long way home. He was comforted and surrounded by his family in these last steps of his earthly journey.

Matt was very proud of his family and took great joy and pride in being "Uncle Matt". He is preceded in death by his niece, Brielle Hill. He is survived by his parents, Larry and Terry, sisters Jenny, and Emily (Brandon Rehrer), brothers Paul (Sara Welker), Mark (Diana Dixon), and Michael. Including many nieces and nephews and their growing families.

Hollis J. Anderson-Haldi
1951 – 2025

Hollis "Holly" J. Anderson-Haldi, 74, of Wallace, ID, passed away on June 23, 2025 at Silverton of Cascadia Health and Rehabilitation in Silverton, ID. Holly was born on January 19, 1951 in Butte, MT.

Hon. George David Carey
1941 – 2025

Hon. George David Carey was born in 1941 in New York City, in the borough of Manhattan, and passed away peacefully at St. Luke's hospital in the loving company of his family.

David earned his B.A. degree from Columbia University in 1964, and his J.D. degree from Fordham School of Law in 1967. Shortly after law school, he moved to Boise, Idaho, and stayed there ever since. He was admitted to the Idaho State Bar in 1968. Judge Carey served as a prosecuting attorney before becoming a justice for the Fourth Judicial District of the State of Idaho. After a long and distinguished tenure, he eventually retired (for a full two days), then served as a senior district judge and as a private mediator for his remaining years. His crowning achievement was the wooing of and successful wedding to Jean in 1969.

He had a great love of trains, the history of World War II, the sound of train whistles, classical music, the sound of train engines, and the works of P.G. Wodehouse. His colleagues described him as a kind, patient, empathetic member of the bench.

David was the cherished son of Estelle and George Carey. He is survived by his wife, Jean, his children Jenny, Geoff, daughter-in-law Sarah Carey, Maggie, former son-in-law Bill Hader, Andy, daughter-in-law Christy Bonstell, and his nine grandchildren. David was an incredible husband, inimitable father, and incomparable grandfather. The Carey family is profoundly grateful to the staff of St. Luke's hospital for their kindness and expert care.

Reese E. Verner
1941 – 2025

Reese E. Verner passed away on June 28, 2025, at his home in Nampa. Reese was born in Phoenix, Arizona, to Reese and Ellen Verner on December 5, 1941. After graduating from Scottsdale High School, Reese attended Pasadena Nazarene College, where he played basketball and earned a degree in business. Pasadena is also where he met the love of his life, Beverly McElwain. Reese and Beverly were married in August of 1962.

From Pasadena, the Verners moved to Tucson, where Reese attended law school. After earning his Juris Doctor from the University of Arizona, Reese began his legal career in his hometown of Phoenix. In 1968, Reese was admitted to the Idaho State Bar and, at that time he and Beverly moved to Nampa, where they found a community that Reese would love dearly and serve faithfully for the rest of his life.

A highly respected member of the Idaho legal community, Reese was known for his honesty, empathy, and compassion. Dedicated to providing legal help to those who could not afford it, Reese was a two-time recipient of the Denise O'Donnell Day Pro Bono Award and also received the Idaho State Bar's Professionalism Award.

In 1979, Reese was elected to the Idaho State Legislature, where he made an immediate impact, garnering recognition as the "outstanding freshman senator." In 1986, he was named the director of community and governmental relations for Northwest Nazarene College. In 1990, Reese took a job with his alma mater, now Point Loma Nazarene University, as the Director of Planned Giving. After three years in San Diego, Reese and Beverly returned home to Nampa, where Reese resumed his law practice until retiring in 2014.

Reese was also an active member of the Kiwanis Club and later served as its president. With the same generosity that fueled his pro bono work, Reese founded the Nampa Youth Golf Program to bring the game he loved to those with the fewest opportunities to play. He helped establish the Canyon County Mosquito Abatement District-an effort rooted in his practical concern for the well-being of his neighbors. His most important work was with Nampa First Church of the Nazarene; he and Beverly attended and served their church faithfully for more than 50 years. Reese's love for Idaho extended beyond its people. An avid outdoorsman, he took full advantage of his easy access to hunting, skiing, and fishing. He especially cherished his time in McCall, the setting for many family reunions and countless treasured memories.

Reese and Beverly's affection for the Gem State proved contagious-numerous friends and relatives followed their lead and made Idaho their home. For all his accomplishments in law, public service, and community work, Reese's greatest pride-and the true center of his life-was his family. Reese was preceded in death by his parents, Reese and Ellen Verner. He is survived by his wife of 63 years, their four children, his two sisters, 14 grandchildren, and nine great-grandchildren.

Max Eiden
1942 – 2025

Maxmillian "Max A. Eiden, Jr. passed away on July 12, 2025, in his beloved McCall. He was known and deeply loved by both family and friends, and is survived by his wife, Carla, of 52 years,

Fiercely proud of both his Idaho and Irish heritage, Max's family goes back to the Idaho gold rush of 1862. Born and raised in Boise, Max attended Boise High School and went on to study at the University of Nevada in Reno and at then the University of Idaho ("U of I"). A member of the Phi Gama Delta fraternity at the U of I, he received his law degree there in 1966 and was a member of the Idaho State Bar for 59 years. As an attorney, he worked with the Idaho Attorney

General's Office as well as noted law firms that included Jones, Gledhill, and Eiden where he was a partner.

Known for keeping friends for a lifetime, Max shared his love of football and sports with many of them. Despite attending the University of Idaho, Max was a dedicated Boise State University booster, in part because his father was the first football coach for Boise Junior College.

A lover of both travel and adventure, Max sailed not only on Payette Lake, but in the San Juans, the Caribbean, and the Mediterranean with his wife and close friends. He was also known for his love of hunting and Labrador retrievers, and many of his best memories were made with his duck hunting buddies at River Valley Farm on the Snake River near Grandview.

He is survived by his wife, Carla, his sister Mary, his three daughters, five grandchildren, three great-grandchildren, and many nieces and nephews. He was preceded in death by his parents, Maxmillian, Sr. and Jayne Eiden Bilboa, his sisters Susan and Virginia, and his son, Maxie.

William Nicholas
1955 – 2025

William "Bill" Nichols died peacefully on May 26, 2025, surrounded by his family. Bill was born in Boise to Bethene and William Nichols. Bill was a great lover of books, knowledge, family, God and the Oregon Ducks. During his childhood, Bill spent a lot of time with his grandparents, Frank and Mary McNealy. They taught him how to use hand tools, and taught him how to fish, nourishing his love for the outdoors.

When Bill turned six, he approved the marriage of his mother to Mel Pulliam. Mel was a steadfast stepfather and engaged Bill in the pursuit of Bird Hunting. Bill and Mel would frequently take off in the morning to chase pheasants in rural Idaho. In 1972, the family moved to Burns, Oregon.

Bill spent his senior year of high school in Burns, graduating from Burns Union High School in 1973. Bill was a gifted student and challenged himself academically. He was the only student to correctly guess the mummified fish species in Biology. But perhaps his most prized accolade was winning his region's "Betty Crocker Homemakers of Tomorrow" competition, despite his best efforts to lose. Bill graduated at the top of his class.

The summer after graduation Bill took a job working for the mill. He worked in the woods as a choker setter, against the wishes of his mother. Bill worked hard that summer and learned a lot. Bill went on to attend Linfield College, where he excelled and graduated *magna cum laude* with a B.A. degree in business administration and political science in 1977. After, Bill attended the University of Oregon School of Law then moved to Nyssa, Oregon and began his career as an attorney. He was admitted to the Idaho State Bar in 1986.

Bill worked for 40 years in law in various capacities, most recently at White Peterson in Nampa. Bill found that the best part of the practice of law was when he helped people find peace of mind that comes from care in estate planning. For him there was no greater privilege than to work with families to get to understand their individual personalities and challenges and help plan how they would leave their unique legacy to the next generation.

Bill was an avid consumer of niche British television, history, and homemade ice cream. An avid researcher, Bill followed Mel's historical journey through WWII. He found that Mel had not received several medals he was entitled to. Bill wrote the Departments of Defense in the US, France, & Belgium, persevering through layers of bureaucracy until the medals were provided.

He was known for his quick wit, quiet competitive drive and devotion to God and family. Most importantly Bill was a genuine and caring husband, father, grandfather, brother, and friend. He was greatly loved and will be missed by many. Bill was preceded in death by his parents. He is survived by his wife of 35 years, Pam; daughters, Kelsey and Cami; his Italian daughter, Shasa; his brother and sister and his three grandsons, and many nieces and nephews.

Richard J. "Tug" Worst
1966 – 2025

Tug was born in Columbus, Ohio, at the Ohio State University on-campus hospital in 1966 to Becky and Dick Worst. He was born a Buckeye, raised by Buckeyes, and bled scarlet and grey until his last breath. Tug's family moved to Idaho in 1968 because of the draft during the Vietnam War, and he's been here ever since.

Tug fell in love with a Blenheim girl, Kari Phair, in the summer of 1985. Teenagers with an Erieau summer romance quickly transformed into two children, three grandchildren, nearly 35 years of marriage, and 40 years of going steady. They became an inseparable team, forging a life that they were proud of and building a family full of love.

Tug graduated from Denison University in Granville, Ohio, in 1988 with a Bachelor of Science in biology and after that, Tug attended Willamette University in Salem, Oregon, where he graduated with his juris doctor in 1992.

Tug was admitted to the Idaho State Bar in 1933 and then spent 32 years practicing law in the State of Idaho. Over the years, his practice became a beacon of his character. He found his purpose in helping others and upholding the integrity of the profession. He spoke with respect and showed compassion to everyone who walked through his door. He enjoyed the last three years of his practice working alongside his daughter, Madison. His pestering had finally paid off when he convinced her to join him in Idaho in 2022. They were both surprised to find just how enjoyable the practice became when they teamed up as Worst and Associates.

Tug was diagnosed with an incurable form of pancreatic cancer in 2023. Through it all, he never lost his belief in his luck and the hope that his journey could be the one that led to a breakthrough. He exhausted every procedure that advances in medical science offered, with the intention of finding the cure or paving the way forward for someone who could. Kari remained by

his side, his constant advocate, and when it was time to fight, they did it together just the same way they always had. Even through his hardest days, he found the strength to rise again for the next, and even into his final moments, his courage remained.

Tug loved spending time in Erieau and when he wasn't there, reveled in the rivers of Idaho and Montana. He also loved being a father and spent countless years trekking through the northwest to support soccer and football teams and took pride in the fact that he could still beat his kids in the 100m sprint well into his 40s.

His life leaves sadness behind for the many that loved and cared for him. Tug is survived by his parents, Rebecca Worst and Richard W. "Dick" Worst, his wife Kari Phair Worst, his children Madison Worst (Kylon Myers) and R. Benjamin Worst (Christina), his grandchildren Hadlee, Nash and Griffin "Tug", and all those who loved him and cherished his time on earth.

Keeping Track

Despite our best efforts, there are times when the Idaho State Bar is not informed of a member's death. Upon learning of a fellow attorney's death, please feel free to contact Calle Belodoff with the information at **cbelodoff@isb.idaho.gov**. This will allow us to honor the individual with details in "In Memoriam."

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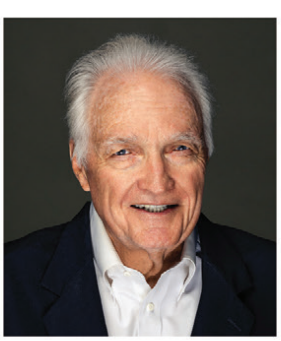
MEDIATION AND ARBITRATION

Merlyn W. Clark

David W. Knotts



Craig L. Meadows

Marvin M. Smith

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Three former and one current Bar Commissioner at Jackrabbit Bar conference, held in St. George, UT from May 22-24, 2025. From left to right: Laird Stone next to his wife Vickie Stone, Mike Howard next to his girlfriend Britney Whittaker, Anne Bowline next to her husband Don Carey, Judge Bob Jackson next to his wife Deb Jackson.

Two New Idaho State Bar Commissioners

STATEWIDE—Voting members of the Idaho State Bar in the Northern and Central Districts of Idaho recently elected new members of the Board of Commissioners. The new Commissioners started serving their three-year terms in July 2025.

Lewiston attorney Patty Weeks was elected to represent the First and Second Districts, replacing Commissioner Jillian Caires. Patty is a graduate of the University of Idaho College of Law and was admitted to the Idaho State Bar in 1993. She is currently the Clerk of the District Court, Nez Perce County. She previously served as an officer and president of the Second District Bar Association.

Boise attorney Leslie Hayes was elected to represent the Fourth District, replacing President Mary York. Leslie is a graduate of the Gonzaga University College of Law and was admitted to the Idaho State Bar in 2008. She currently serves as the Deputy Chief Administrative Hearing Officer in the Idaho Office of Administrative Hearings.

Stoel Rives Appoints Meaghan Nelson as Co-Leader of Technology Industry Group Joining Steve Lovett in Leadership Role

BOSIE—Stoel Rives announced the appointment of Meaghan Nelson to serve as co-leader of the firm's Technology Industry Group alongside Steve Lovett. Nelson, a corporate and securities partner based in the firm's Boise office, also maintains an active practice in Sacramento. She brings more than 15 years of legal and business experience from AmLaw 50 firms and as in-house general counsel for prominent companies in the technology sector.

As a corporate partner, Nelson represents companies of all stages of maturity, including formation, funding, expansion, and exit, with an emphasis on the technology industry. She advises public and private companies on general corporate law and governance matters as well as transactions, including venture financings, mergers and acquisitions, and public offerings. She also counsels clients on public company disclosure, stock exchange listing compliance, and reporting to the U.S. Securities and Exchange Commission.

City of Post Falls Welcomes Casey Drews as New City Prosecutor

POST FALLS—The City of Post Falls is pleased to announce the hiring of Casey E. Drews as its new City Prosecutor. A seasoned litigator and lifelong North Idaho resident, Ms. Drews brings nearly a decade of public service and trial experience to the City's Legal Services Department.

Ms. Drews joins the City following her most recent role as a Deputy Prosecuting Attorney for Kootenai County, where she led the prosecution of cases, including violent crimes, narcotics, and property offenses. She was also the designated prosecutor for the Mental Health Court Program, reflecting her dedication to thoughtful and rehabilitative approaches to justice.

A graduate of the University of Idaho College of Law, Ms. Drews was raised in the Silver Valley and is now raising her own family in Coeur d'Alene.

Second District Welcomes Judge Marshall to the District Bench

LATAH COUNTY—The legal community gathered on Friday, June 6, for Judge Megan Marshall's formal investiture, marking her appointment as a district judge for the Second Judicial District. Held at the Latah County Courthouse, the event drew colleagues, family and members of the local Bar who applauded Judge Marshall's commitment to justice and public service.

Judge Marshall becomes the first woman to serve as a district judge in Latah County. Judge Jay P. Gaskill administered the oath of office and presided over the ceremony,

From left: Judge Megan Marshall, her family, and Judge Jay Gaskill. Courtesy of Nate Poppino, ID Courts.

Judge Eileen McGovern, right, speaks while Administrative District Judge Barry McHugh looks on. Photo credit: ID Courts.

Judge Taylor, right, sworn in by District Judge Michael Whyte. Photo credit: ID Courts.

highlighting Judge Marshall's previous experience, kindness and work ethic.

Judge Marshall expressed her gratitude to her family, the courthouse community and mentors who helped her get to this point in her career. She spoke of the honor and the responsibility we all carry to ensure fairness and dignity in every courtroom.

Location of Wills Prepared by Pete Snow and Church, Church and Snow

FIFTH DISTRICT—The firm of Parsons, Loveland, Shirley & Miller is in possession of original Wills prepared by Burley attorney Pete Snow and the former Burley firm of Church, Church and Snow. Any inquiries concerning a Will should be directed to Parsons, Loveland, Shirley & Miller, P.O. Box 910, Burley, Idaho 83318, by telephone to 208-878-8382 or by email to rmiller@magicvalley.law.

The First District Welcomes Judge Eileen McGovern's to the Bench

FIRST DISTRICT—Kootenai County Magistrate Judge Eileen McGovern was publicly sworn in June 20 during a ceremony at the Kootenai County Courthouse. Congratulations to Judge McGovern!

The Seventh District Welcomes Judge Brendon Taylor to the Bench

SEVENTH DISTRICT—Judge Brendon Taylor was publicly sworn in as a district judge for the Seventh Judicial District during a ceremony June 20 at the Bonneville County Courthouse in Idaho Falls. Judge Taylor succeeds retired District Judge Bruce Pickett. Congratulations to Judge Taylor!

Bradley D. VandenDries Joins Miller Nash's Boise Office

BOISE—Miller Nash LLP welcomes Bradley VandenDries to the firm's litigation team. VandenDries, based in the firm's Boise office, is a seasoned litigator who represents clients in construction, real estate and insurance disputes, with a particular emphasis on resolving claims involving delays, defects, payment issues and coverage disputes. He also has extensive experience in drafting and negotiating sophisticated commercial construction contracts on behalf of owners, developers, contractors and design professionals.

Before joining Miller Nash, VandenDries practiced at a full-service law firm in Boise, where he advised a broad range of clients in the construction and real estate sectors and represented them in both litigation and alternative dispute resolution proceedings.

McCrea Appointed to First Judicial District

FIRST DISTRICT— Gov. Brad Little appointed Regina McCrea as a district judge in the First Judicial District, chambered in Kootenai County. Judge McCrea will fill a new position created this year by the Idaho Legislature.

McCrea is a is a seasoned trial attorney with over 20 years of experience in private practice, focusing on personal injury, wrongful death, medical and legal malpractice, and general civil disputes.

Judge Sunil Ramalingam Appointed in Latah County

LATAH COUNTY—Judge Sunil Ramalingam will become the next magistrate judge for Latah County effecting August 18, 2025, the Second District Magistrates Commission announced.

Judge Ramalingam is currently a magistrate judge for Nez Perce County. He will succeed Judge Megan Marshall, who was recently appointed as a district judge chambered in Latah County.

Deputy Bar Counsel Julia Crossland Retires; the Bar Welcomes New Assistant Bar Counsel

BOISE—Longstanding Deputy Bar Counsel, Julia Crossland, retired on July 31, 2025. The Idaho State Bar thanks Julia for her nearly 26 years of service to the Idaho State Bar and its members. Julia helped many clients harmed by dishonest lawyer conduct, provided thoughtful ethics advice to members, and protected the public through her discipline investigations and formal charge cases. Simply put, she will be greatly missed.

While we are sad to see Julia go, the Bar is also excited to welcome Samantha Lundberg to her new role as Assistant Bar Counsel. Samantha previously served as a judicial law clerk at the Idaho Supreme Court and before that worked as a litigation attorney at a private firm in Boise.

Two New Magistrate Judges Appointed in Seventh Judicial District

SEVENTH DISTRICT—The Seventh Judicial District Magistrates Commission has selected two new magistrate judges to be chambered in Bonneville County.

Jacob B. Workman since 2017 has been the managing attorney for the Idaho Legal Aid Services office in Idaho Falls. Michael A. Kirkham has worked for more than 10 years as an attorney for the city of Idaho Falls, most recently as the top attorney for the city.

Judge Workman will fill the new magistrate judge position created this year by the Idaho Legislature, while Judge Kirkham will succeed Judge Brendon Taylor, recently appointed as a district judge.

Farewell and Thank You to Lindsey Welfley

BOISE—With a mixture of gratitude and sadness, the Idaho State Bar wishes farewell to Lindsey Welfley, as she has accepted a position at the State Public Defender's Office. Lindsey has been a phenomenal editor, alongside the Editorial Board, for *The Advocate* since her first issue in October 2018. We are incredibly grateful for her dedication, passion, and countless hours she has poured into making *The Advocate* what it is, and the Idaho State Bar wishes her all the best in her future endeavors and thanks her for everything.

2025 Resolution Process

STATEWIDE—The Idaho State Bar cannot take positions on legislative matters or propose changes to court rules or substantive rules governing the Bar by act of its Bar Commissioners, or at its Annual Meeting, without first submitting such matters to the membership for a vote through the Resolution Process.

Idaho Bar Commission Rule 906 governs the Resolution Process. Resolutions for the 2025 Resolution Process must be submitted by 5:00 p.m. MT on September 25, 2025. If you have questions about the process or are interested in submitting a resolution, contact Maureen Ryan Braley at mryanbraley@isb.idaho.gov or (208) 334-4500.

2025 Resolution Meetings Schedule

District	District Bar President	Meeting Date	Meeting Location	Meeting time
First District	Julia Schoffstall	Thursday Nov. 6	The Coeur d'Alene Resort 115 S. Second St. - CDA	11:00 a.m.
Second District	Brennan Wright	Wednesday Nov. 5	Best Western University Inn 1516 Pullman Rd. - Moscow	6:00 p.m.
Third District	Tyler Rounds	Tuesday Nov. 18	Indian Creek Steakhouse 711 Main St. - Caldwell	6:00 p.m.
Fourth District	Jill Holinka	Wednesday Nov. 19	The Arid Club 1137 W. River St. - Boise	Noon
Fifth District	Tyler Rands	Thursday Nov. 13	Blue Lakes Country Club 1940 Blue Lakes Grade - Jerome	6:00 p.m.
Sixth District	John Bulger	Thursday Nov. 13	TBD	Noon
Seventh District	Payton Hampton	Wednesday Nov. 12	Hilton Garden Inn 700 Lindsey Blvd. - Idaho Falls	Noon

Continuing Legal Education

September

4 *Internet Ethics: Navigating Lawyer Responsibilities Online*
Audio Stream
1.0 Ethics credit

5 *History Recreated - Celebrating the 100th Anniversary of the Idaho State Bar: Where it All Began*
Lewis-Clark Hote, Lewiston & Webcast
2.0 CLE credits

9 *2025 Bench & Bar CLE – How to Be Abe Lincoln*
JUMP, Boise & Webcast
1.5 CLE credits

12 *2025 Intellectual Property Law CLE*
Simplot Headquarters – Boise & Webcast

17 *2025 Constitution Day CLE*
Boise & Webcast

25 *2025 Fall New Attorney Program*
Boise Centre, Boise
4.0 CLE credits including 1.0 Ethics

= In Person

= Live Webcast

= Live Audio Stream

October

1-3 *2025 Estate Planning Conference*

1 *Crafting Contracts: Ethical Issues for Drafters*

2 *Shared Spaces: Ethics of Remote and Virtual Law Offices*

8 *2025 Civil Litigation Ethics: Navigating New Challenges, Part 1*

9 *2025 Civil Litigation Ethics: Navigating New Challenges, Part 2*

10-11 *2025 Family Law Conference*

15 *How Ethics Rules Apply to Lawyers Outside of Law Practice*

17 *Bellwood Lecture – Alan Dershowitz*

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